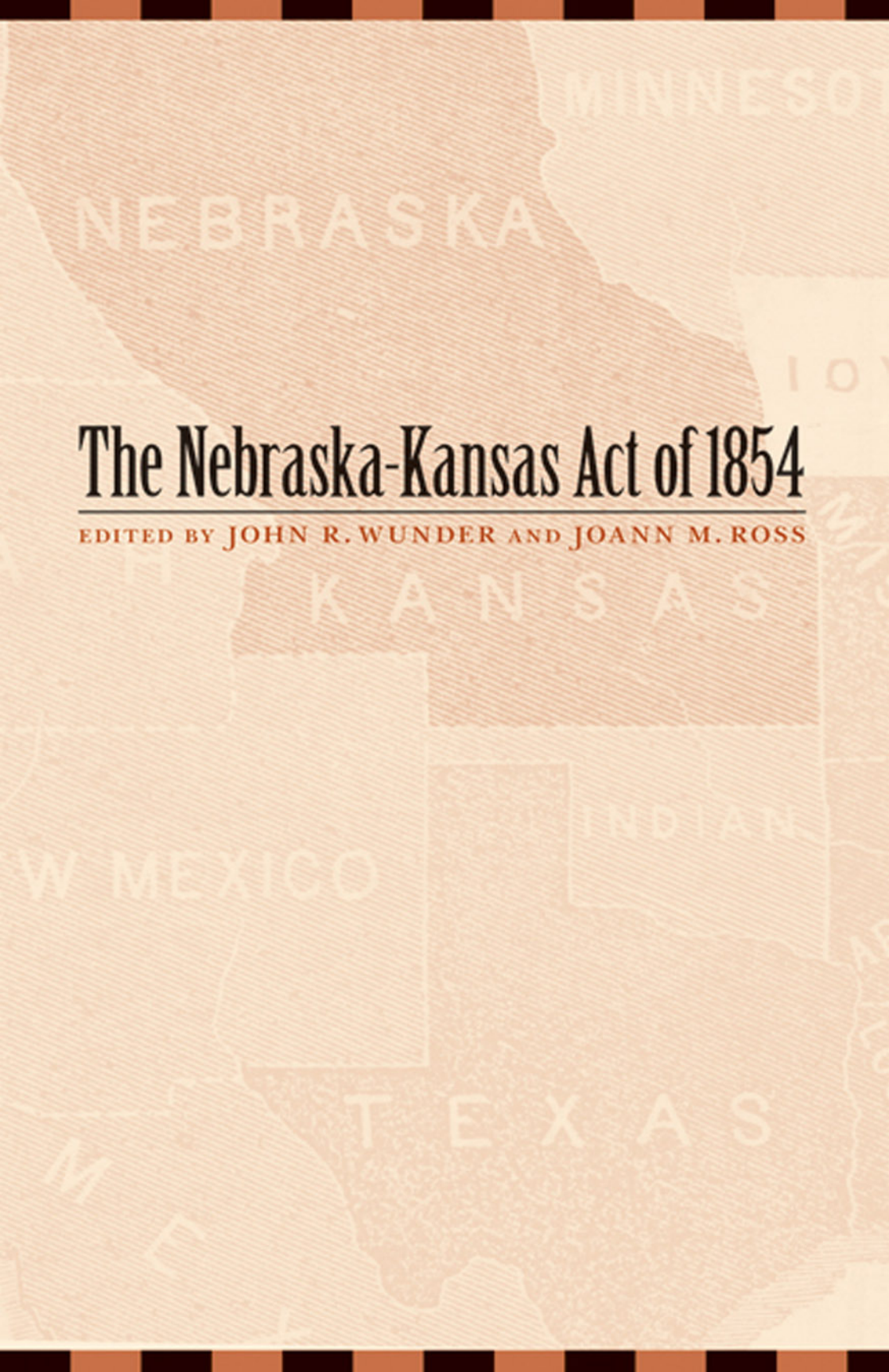

The Nebraska-Kansas Act of 1854

EDITED BY JOHN R. WUNDER AND JOANN M. ROSS

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Law in the American West

SERIES EDITOR | John R. Wunder, *University of Nebraska–Lincoln*

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Dedication

This book is dedicated to James A. Rawley.

Professor Rawley, a historian's historian, was a model to so many, including all who have contributed to this volume. He arrived at the University of Nebraska in 1964 and soon established himself as a preeminent historian of his university, state, region, and nation. Among his many writings, he published *Turning Points of the Civil War* in 1966 and what scholars have often termed his most popular work, *Race and Politics: "Bleeding Kansas" and the Coming of the Civil War*, in 1969. Kenneth J. Winkle, chair of the Department of History at the University of Nebraska–Lincoln, writing "In Memoriam" for the American Historian Association's *Perspectives* (March 2006), termed *Race and Politics* Rawley's "generation's definitive account of popular sovereignty in Kansas Territory during the 1850s." The Rawley Prize, which Jim established with the Organization of American Historians, is given each year to the best book on the study of American race relations.

Jim Rawley died on November 29, 2005, at age eighty-nine. He had just finished some writing in his office in the Department of History on the UNL campus, and he was heading toward the library. He passed away doing what he very much enjoyed: researching and writing history.

When we approached him in 2003 about contributing to a conference on the sesquicentennial of the Kansas-Nebraska Act and a new and original projected volume, he was enthusiastic and inspiring. He said he would be delighted to do a talk and essay. He participated on a panel with Phillip Paludan, Tekla Ali Johnson, and Kenneth Winkle on a November wintery night in 2004 at the Nebraska State Capitol before about two hundred hardy Nebraskans, and in early 2005 he put the finishing touches on his essay that is included in this volume. He had already approved of our copyediting and answered editing queries most promptly with his typical good humor by the time of his unexpected death.

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Acknowledgments

This book would not have happened without the active and generous support of many people. The project began with a recognized void in commemorating the sesquicentennial of the Kansas-Nebraska Act, the actual organic statute that created the Central Plains states of Nebraska and Kansas. To provide a public event that would enhance the existing knowledge of this watershed moment in the history not only of these two states but of the entire nation, a number of institutions and their leaders collaborated for the public good. These included the Nebraska Humanities Council, the Nebraska State Historical Society, the University of Nebraska–Lincoln and its Department of History, the Nebraska State Legislature, and the Nebraska State Capitol.

Four public events from September to November 2004 brought nearly a thousand people to the Warner Senate Chambers in the Nebraska State Capitol to hear lectures and discussions about the meaning of this important law. The sessions featured host professors from the Department of History and administrators from the University of Nebraska–Lincoln, state senators, and prominent scholars. We specifically thank Professors Frederick Luebke, Kenneth Winkle, and Jeannette Jones from the Department of History, Chancellor Harvey Perlman, Senior Vice Chancellor for Academic Affairs Barbara Couture, Associate Dean of the College of Arts and Sciences Laura White of the University of Nebraska–Lincoln, and Nebraska State Senators Ronald Raikes, DiAnna Schimek, Elaine Stuhr, and Adrian Smith for their participation and thoughtful contributions.

The public presentations that led to the eventual chapters in this book would not have been possible without the dedication of a number of extremely learned and prominent historians. They included Mark E. Neely Jr., McCabe-Greer Professor of Civil War History at Pennsylvania State University; Nicole Etcheson, Andrew M. Bracken Professor of History at Ball State University; Walter C. Rucker,

Associate Professor of African American Studies at Ohio State University; James A. Rawley, Carl Happold Distinguished Emeritus Professor of History at the University of Nebraska–Lincoln; Tekla Ali Johnson, assistant professor of history at Johnson C. Smith University; Phillip S. Paludan, Naomi B. Lynn Distinguished Professor of Lincoln Studies at the University of Illinois at Springfield; and Kenneth J. Winkle, Sorensen Professor of History at the University of Nebraska–Lincoln.

The funding that made this event and volume possible came primarily from the Nebraska Humanities Council and the University of Nebraska–Lincoln. Jane Renner Hood, Raymond Screws, the members of the Nebraska Humanities Council, and the Council's staff deserve special accolades. Assistance also came from the University of Nebraska via Dean Richard Hoffmann and the College of Arts and Sciences, Associate Vice Chancellor for Academic Affairs David Brinkerhoff, the Carroll R. Pauley Endowment of the Department of History and the support of its chair, Professor Winkle, Director Paul Royster and History Acquisitions Editor Elizabeth Demers of the University of Nebraska Press, and Dr. James Hewitt of Nebraska Wesleyan University.

Making such a complex project work is all the more amazing when it actually happens, and it would not have happened as smoothly as it did without the energy and special attention of Judy Backhaus and her staff at the Nebraska State Capitol. Also assisting in important ways were Director Lawrence J. Sommer, John Carter, and Anne Billesbach of the Nebraska State Historical Society, University of Nebraska–Lincoln history graduate and undergraduate students, and the University of Nebraska–Lincoln Office of Publications and Photography. Finally, the editors would like to thank cartographer Ezra Zeitler for creating the maps found in chapter 3.

Subsequent to the symposia, but before the publication of this book, we were saddened to learn of the deaths of two of the most significant scholars of America's Civil War era: James A. Rawley and Phillip S. Paludan. Within this volume are found two essays that Profesors Rawley and Paludan each completed before their deaths.

John R. Wunder and Joann M. Ross

In addition, I wish to acknowledge the loyalty and vital assistance of both Brenden Rensink, then an MA history student at the University of Nebraska–Lincoln, and Joann M. Ross, then a PhD history student at the University of Nebraska–Lincoln. Shortly before the first lecture event was to occur in September 2004, I suffered a severe heart attack. Brenden and Joann took over all responsibility for the project and executed everything flawlessly, and Associate Professor Margaret Jacobs from the Department of History at UNL stepped in to assist. By the time I had recovered sufficiently to chair the last session in November, everything was completely under control. I will be forever grateful.

J.R.W.

The Nebraska-Kansas Act of 1854

Chapter One

"An Eclipse of the Sun"

The Nebraska-Kansas Act in Historical Perspective

JOHN R. WUNDER & JOANN M. ROSS

On the floor of the U.S. Senate in 1854, Ohio senator Benjamin Wade foresaw doom from the passage of the Nebraska bill. The future Radical Republican proved prophetic. "Tomorrow, I believe, there is to be an eclipse of the sun, and I think that the sun in the heavens and the glory of this republic should both go into obscurity and darkness together. Let the bill then pass. It is a proper occasion for so dark and damning a deed."[1]

Franklin Pierce might well have contacted a seer at this time to interpret this eclipse. He had the misfortune to serve as president of the United States a few years prior to the Civil War. Elected in 1852 as a decisive and strong-willed Democrat who wanted to work with both the North and the South to solve the vexing problems of the day and to stop the nation's drift toward sectional nationalism, Pierce instead accelerated the process. In particular, he signed into law a statute—An Act to Organize the Territories of Nebraska and Kansas—that is often cited as a leading cause of the Civil War.

President Pierce soon knew he had made a profound miscalculation, and he regretted it. Part of his sadness was personal; the sudden death of his young son and the burdens of his office weighed heavily upon him. Shortly after his presidency concluded in 1857, he reflected that "this Kansas [and Nebraska]

matter had given him more harassing anxiety than anything that had happened since the loss of his son; that it haunted him day and night, and was the great overshadowing trouble of his administration."[2] Pierce had many political reasons for regret. Not only was the violence and bloodshed in Kansas escalating on his watch and the unpopularity of what would later be termed the Kansas-Nebraska Act causing political earthquakes throughout the North and South, but Pierce became the only incumbent president ever to be denied renomination by his own party—the only president ever to be so humiliated. When he later spoke out against the Civil War shortly after it started, he was accused of treason by members of the Lincoln administration.[3] The wrong man at the wrong time, Pierce presided over the passage and implementation of a law that has been generally regarded by most historians over the years as infamous.

Over 150 years ago, an act of Congress signed into law by President Pierce officially created Nebraska and Kansas. Termed "An Act to Organize the Territories of Nebraska and Kansas," this statute represented a new kind of territorial organic act.[4] It not only drew the borders and authorized governments for two new territories in the Louisiana Purchase lands for the first time, that of Nebraska and its southern counterpart, Kansas. It also allowed the citizens of these territories to determine for themselves whether they might allow or ban slavery within their boundaries. In effect it abolished the Missouri Compromise, which had prohibited slavery in the region since 1820. This bow to local control, known then and now as "popular sovereignty," caused a great deal of anguish and some vicious confrontations.

Two misperceptions have lingered surrounding this controversial law. First, its actual name has been inverted. Officially the "Act to Organize the Territories of Nebraska and Kansas," it should have been termed the "Nebraska-Kansas Act." In Congress, the would-be law during debate was almost always referred to as "the Nebraska bill." But historically a different label stuck, primarily because of "bleeding" Kansas, an adjective which in itself is somewhat metaphorically and historically suspect. This volume will

succumb to the traditional, though officially inaccurate, moniker of Kansas-Nebraska Act for the rest of the historical narrative. With the volume's title, the point is already well taken. Second, the association of popular sovereignty with the Kansas-Nebraska Act is accurate, but it is inaccurate to assert that this was the first time such a law had been passed. In fact, in the Compromise of 1850, the territories of Utah and New Mexico had been given the option of implementing popular sovereignty. Different issues arose in each of these territories that never reached the clamor of Kansas, and thus neither territory divided over a slavery position. What is "first" here is that this new kind of measurement of slavery interest on the part of Westerners was being tried on Louisiana Purchase lands, the very lands that had been the subject of national division a generation earlier which the Missouri Compromise supposedly assuaged.

Who might have anticipated seven years after the passage of the Kansas-Nebraska Act that the United States would shatter in 1861 and that the Confederate States and the Union would struggle through a vicious four-year civil war to the death? Unionism prevailed, but the historical importance of the Kansas-Nebraska Act of 1854 would not be lessened. Most historians agree that the law along with Kansas's subsequent mini civil war, John Brown's assault on Harpers Ferry, the popular lauding in the North and trashing in the South of Harriet Beecher Stowe's novel *Uncle Tom's Cabin*, and *Dred Scott v. Sandford*, the 1857 U.S. Supreme Court decision, all accentuated the nation's cultural divide over slavery and hastened the day when American shot American.

Historian Kermit L. Hall has ruminated about understanding laws and history. While it may be important to know what rules a law outlines, any legal history of a statute, especially one that has been so often publicly discussed, requires knowing "what consequences its contents have had for the society it is meant to serve." Crucial to statutory legal analysis then is asking "what significance [the law] had for the larger external world it aimed to serve." According to Hall, historians must consider a variety of causal relationships. In other words, "We want to know the law by what it

has done, or by what has been done to it, rather than simply by what it was."[5]

Throughout American legal and political history, a variety of watershed moments have occurred. Many include the adoption of specific laws, and these statutes had national range even though they may have been meant to resolve local or regional issues. Certain laws helped precipitate the American Revolution; others helped reshape American society after the Great Depression. And one, the Nebraska-Kansas Act, proved sufficiently controversial so as to increase the likelihood of national division.

It was in 1854 when this significant law creating Nebraska and Kansas territories took its place among those federal statutes that have made up the American nation's political and legal history, and it is perhaps time to reclaim (and perhaps even reorder) the title and legacy of the Act—or to express it historically in another substantive way, to put the "Nebraska" back in the Kansas-Nebraska Act. Significant scholarly ink has been devoted to explaining the general and specific nuances of the Act nationally as well as regionally in Kansas. The place of Nebraska in that ink has been rare. That a Nebraska-centric book-length treatment of the Kansas-Nebraska Act does not exist motivated and informed this particular volume.

The sesquicentennial of the Kansas-Nebraska Act has brought forth significant new scholarship. Much of it has concentrated on events in Kansas. Much of this history has evolved from James A. Rawley's *Race & Politics: "Bleeding Kansas" and the Coming of the Civil War*, first published in 1969. The best of the new is *Bleeding Kansas: Contested Liberty in the Civil War Era* by Nicole Etcheson. This thorough and creative volume takes as its theme how exercising the extremities of liberty pulled the nation apart. The setting for this exercise proved to be the new Territory of Kansas. Ironically, according to the dust jacket for Etcheson's book, "Many free-state Kansans seemed to care little about slaves, and more proslavery Kansans owned not a single slave." The raw principles of democracy, and not solely race, then were unleashed by the

Kansas-Nebraska Act, leading to violent instability on the American frontier.

The Kansas State Historical Society offered its contributions in the form of a special double issue of *Kansas History* published during the summer of 2004 and the creation of a Web site in collaboration with the University of Kansas. Topics are multiple and varied in both *Kansas History* and the Web site. Their publication begins with a brief introduction by *Kansas History* editor Virgil W. Dean and the special issue's coeditor, Jonathan H. Earle. In short order, Kansas historian Craig Miner contributes "Historic Ground: The Ongoing Enterprise of Kansas Territorial History," Etcheson revisits "The Great Principle of Self-Government: Popular Sovereignty and Bleeding Kansas," and University of Kansas historian Rita G. Napier takes a close look at local Kansas politics in "The Hidden History of Bleeding Kansas: Leavenworth and the Formation of the Free-State Movement." Six more articles grace this issue, ranging from "Lawrence in 1854: Recollections of Joseph Savage" and "An 'Idea of Things in Kansas': John Brown's 1857 New England Speech" to the modern meaning of Kansas's creation in Rusty Monhollon and Kristen Tegtmeier Oertel's "From Brown to *Brown*: A Century of Struggle for Equality in Kansas." The Web site, "Territorial Kansas Online, 1854–1861," was reviewed in March 2005 in the *Journal of American History,* which noted that it held a "vast array of primary sources" which provides a "wonderful resource for teachers and professors as well as for researchers."

Both Kansas and, to a much lesser extent, Nebraska claim John Brown, the crusading antislavery terrorist. Note the latest biography's subtitle. David S. Reynolds has written *John Brown, Abolitionist: The Man Who Killed Slavery, Sparked the Civil War, and Seeded Civil Rights.* Brown is synopsized as "a Puritan warrior who gripped slavery by the throat and triggered the Civil War." These excesses continue throughout the narrative to the very end, where Reynolds sees modern parallels to "bleeding" Kansas and Brown's role: "When Thoreau said that Brown's words were more powerful than his rifles or when Emerson ranked his court speech with

the Gettysburg Address, they were highlighting the power of his language." Perhaps, but then Reynolds moves on to speculate on modern applications of Brown's ideology by Ted Kaczynski and Timothy McVeigh, "Shakespeares when compared with other modern terrorists."[6] John Brown remains a man for all kinds of seasoning.

The political history of the 1850s is also the subject of recent significant revision. Michael F. Holt has argued in *The Fate of Their Country* that the Civil War was caused by extreme partisan politics. Moreover, Holt stipulates that repeal of the Missouri Compromise in the Kansas-Nebraska Act as demanded by Southern political leaders in Congress "was arguably the single most important turning point on the road to disunion and civil war."[7] The political prelude to the Nebraska bill is described in Jonathan H. Earle's 2004 *Jacksonian Antislavery and the Politics of Free Soil, 1824–1854*. He revises the previous understanding of Free Soil advocates. In his intellectual history, Free Soilers base their political evolution from the fundamental notion of availing property equally to all individuals—rich or poor, white or black. That in turn meant hostility to slavery had to underscore this important political movement. It was so strong that it turned Northern Democrats, such as David Wilmot and Martin Van Buren, into antislavery politicos.

Whigs were also not immune to these political whirlwinds at play. Abraham Lincoln emerged in the 1850s as a politician reinvented. His intellectual strengths allowed him to move smoothly from defeated Whig congressman to successful Republican presidential candidate. Lincoln, like many others, was profoundly affected by the Kansas-Nebraska Act. Mark E. Neely Jr. explains in T*he Last Best Hope of Earth* that the Kansas-Nebraska Act's approval—"perhaps the most explosive piece of legislation ever passed by a U.S. Congress"—caused Lincoln to change parties and try for national office.[8] In his 2004 historical survey, *The Shattering of the Union: America in the 1850s*, Eric H. Walther aptly uses an unattributed quotation as the title for his chapter on the Kansas-Nebraska Act: "It Will Raise a Hell of a Storm." It did.

Recent Nebraska literature on this topic is characterized by

paucity. No modern book-length monograph exists on either the Kansas-Nebraska Act in Nebraska or a social and economic history of Nebraska Territory. Three issues of *Nebraska History* have treated the Kansas-Nebraska Act. In the fall 1992 issue, James B. Potts wrote about several political efforts to merge land south of the Platte River with Kansas Territory. The title of his article offers some insight: "North of 'Bleeding Kansas': The 1850s Political Crisis in Nebraska Territory." A southeastern territorial secessionist movement, encouraged by young pro-slavery Democrats such as J. Sterling Morton, fizzled; Kansans had no interest. In the winter 2003 issue, James E. Potter offered "*Nebraska History* on Nebraska Territory: A Reader's Guide." This historiographical essay considered twenty-nine articles from *Nebraska History* and aside from two essays by James B. Potts, no work written since 1986 is included. A handy list of territorial governors and other bibliographical materials follows the Potter survey. And in the summer 2004 issue, *Nebraska History* reproduced the J. H. Colton Company map, "Nebraska & Kansas," printed in New York in 1854, to commemorate the sesquicentennial of the Kansas-Nebraska Act.

The sesquicentennial was not overlooked in Nebraska. A lecture series, sponsored by the Nebraska Humanities Council and the University of Nebraska–Lincoln Department of History, met four times in the Nebraska State Capitol between September 20 and November 8, 2004. The subsequent essays in this volume are derived from this event. The Kansas-Nebraska Act was physically denoted with the remarking and resurveying of the First Guide Meridian East on the state line between Kansas and Nebraska in 2005. This marker, originally placed in 1855 by two teams of eight surveyors, became the basis for delineating homesteads, towns, and townships in Nebraska.

The seven original essays that follow come from both nationally renowned and new scholars. They feature topics that accentuate the political, social, and personal contexts of the Kansas-Nebraska Act. Some specific attention is devoted to Nebraska in this volume.

This statute proved to be an agent of change. It fundamentally altered American political and legal culture. In chapter 2, Mark E. Neely Jr. explains how the act evolved out of the last vestiges of a rather crude political culture—he terms the law "its last mad act"—that encouraged dueling to settle political honor. Indeed, a testy argument over which committee in the House to send the Nebraska bill to led New York senator Francis Cutting to challenge Kentucky senator John C. Breckinridge to a duel. The two men actually left Washington DC to enact their deadly act in Bladensburg, Maryland (dueling was illegal in Washington DC proper), but before they shot at each other, another dueling senator, Missouri's Thomas Hart Benton, intervened. Neely shows how the statute's embattled author, Stephen A. Douglas, chose carefully whom he would take on politically; he avoided avowed duelists in his public statements and debates. Dueling, a "violent 'mania' of the 1850s," existed in all regions, not just the South, and its popularity seemed connected to the pressures that cultural historians have attributed to American manhood during the era. Extreme responses also resulted in the publication of an antislavery pamphlet, *Appeal of the Independent Democrats*, drafted primarily by Salmon P. Chase, that took Douglas and the Kansas-Nebraska Act to task. Neely argues persuasively that historians have overemphasized the pamphlet's impact on the political process, but nevertheless it remains representative of the extremities exposed in America's pre–civil war political culture.

Chapter 3 continues this emphasis on national culture by examining the legal context of this law in terms of other territorial organic acts. Brenden Rensink shows how the Kansas-Nebraska Act was not an innovative statute. It constituted a tried-and-true approach to territorial expansion that combined colonialism with democratic evolutionary equality. The United States invented a legal system that allowed acquired regions to be incorporated into the body politic on an equal statehood basis. While territorial status was generally a prerequisite to incorporation, it was not always required, Texas and California being notable exceptions. Rensink analyzes the Northwest Ordinance, the Orleans Territory

Act, the Wisconsin Territory Act, and the New Mexico and Utah Territory acts. He specifically considers boundary setting, types of territorial officials and governments, suffrage qualifications, elections, Indian relations, and the issue of slavery, and he concludes that the Kansas-Nebraska Act was neither revolutionary nor regressive. It very much reflected past practices, but its adoption in the strained political climate of the 1850s proved problematic.

The Kansas-Nebraska Act not only influenced American political and legal culture, but it also significantly changed the lives and values of major American political leaders and commentators of the time. In particular, the destinies of Stephen A. Douglas, Abraham Lincoln, and Frederick Douglass were fundamentally altered. In chapter 4, James A. Rawley explains how the law Douglas conceived took over his political career. At times Douglas seemed the lone flagstaff against the wind. Both Jefferson Davis and Abraham Lincoln rejected what Douglas saw as a compromise. After all, he reasoned, slavery could be outlawed or extended depending upon the will of the people. Although Lincoln eventually bested Douglas in electoral politics, when the Lincoln presidency began, Douglas did what he could for the embattled leader. Douglas returned to Illinois exhausted after the arduous campaign. He urged unity of his fellow citizens before he died in June 1861.

Lincoln was also affected by the Kansas-Nebraska Act. In some ways, it revived his political career. It propelled him to oppose Douglas's return to the Senate and led to the famous Lincoln-Douglas debates. Lincoln's coming to terms with the slave issue was hastened by the Nebraska bill. His gut reaction was visceral opposition. In some ways, it ended Lincoln's flirtation with the fledgling colonization movement intent on returning slaves to Africa and led him to the abolitionist side. Ultimately, Lincoln told audiences in 1854 that he hated the Kansas-Nebraska Act because it suppressed freedom and legitimatized slavery, a condition Lincoln labeled a monstrosity. In chapter 5, Lincoln scholar Phillip S. Paludan describes the Kansas-Nebraska Act as Lincoln's firebell, alarming and awakening him to the greatest evil threatening the nation.

Frederick Douglass, too, seemed recharged by the Kansas-Nebraska Act. Tekla Ali Johnson argues in chapter 6 that Douglass was radicalized as he changed from a reformer to a revolutionary. He saw this law complementing an already problematic federal statute for African Americans, the Fugitive Slave Law of 1850. These statutory adoptions seemed to stymie the antislavery movement. To fight the Nebraska bill, Douglass shadowed Stephen Douglas to the Democrats' chagrin. Douglass charged the Democrats and what was left of the Southern Whigs with seeking to nationalize slavery through the Kansas-Nebraska Act, and he was right. In effect, it did so. Later in his life, Douglass directly connected with Nebraska when he journeyed there in search of a long-lost sister who had homesteaded in Nebraska with her husband. They did not meet before their deaths.

Like Frederick Douglass, African Americans in general saw the Kansas-Nebraska Act as a betrayal of the North. Here were free whites legalizing the extension of slavery. Walter C. Rucker argues persuasively in chapter 7 that the Kansas-Nebraska Act changed black political views. The Act was perceived as a serious retreat from efforts toward incremental abolitionism. Observing African American political discourse of the time, 1854 clearly marked a fundamental radicalization. The Nebraska bill was viewed as an unnecessary provocation that conceded time and political power to the slaveholding South. No longer could black leadership afford to go along with delay and piecemeal legislation that enhanced rather than weakened slavery.

In the last chapter, Nicole Etcheson turns her talents from Kansas to Nebraska. She sees pre–Civil War Nebraska as volatile and practicing contentious politics, but never dissolving into turmoil like Kansas. In part, this is because of those who came to Nebraska. A substantial migration of Iowans initially crossed the borders, mitigating any chance of pro-and antislavery violence. There were debates in the Nebraska territorial legislature over slavery, but the rhetoric tended to remain calm. Nebraska leaders were more concerned with presenting Nebraska as a progressive place to settle, offering a clear contrast to the volatility of Kan-

sas. True enough, there were electoral rivalries and sneaky maneuvers, but they were resolved within the governing framework. Why not a "bleeding" Nebraska? Etcheson argues that conditions were different from Kansas, that political party equality prevented radical ideological shifts and violence responses, and that where a capitol might be located seemed to concentrate most political interests. That slavery would not be extended to Nebraska Territory was the accepted majority viewpoint, and it could not be shifted. The result was not even a "bruised" Nebraska, whereas Kansas sadly bled.

Thus *The Nebraska-Kansas Act of 1854* is a different kind of historical treatment of a previously discussed hallmark in nineteenth-century American political and legal history. The new law brought rather than suffused controversy, and it truly nationalized an undeveloped region in the Central Plains. Slavery issues were reactivated with more hostility than ever before. What some politicos considered to be a temporary respite from the winds of division were over. The gusts of war were now felt from all four directions, even from the West.

The Nebraska bill became law, and the spotlight of racial rancor shifted from the statehood of Missouri and Maine and the Fugitive Slave Act to two future territories on the Great Plains, the homelands of numerous indigenous nations. Explosions of a different nature, between Indians and settlers, would come one and two decades later. But make no mistake, the Kansas-Nebraska Act was no compromise. Neither the most intransigent slaveholder from the South nor the most radical Free Soiler in the North believed for one second that this statute could resolve the great moral issue of the day. When it came time to implement that act, Kansas could not contain its excesses.

When we think of the history of this significant federal law today, visions of the bloodshed of Kansas, the Lincoln-Douglas debates, secession, and the Civil War generally come to mind. They have been thoroughly chronicled by some of the very best historians the United States has ever produced. That national politics over

region, the repositioning of political leadership, radicalization of African American opinion, and the settlement of Nebraska were all deeply impacted by the Kansas-Nebraska Act are less known. We hope that this volume will remedy some of this previous historical neglect.

Notes

1. Thomas Goodrich, *War to the Knife: Bleeding Kansas, 1854–1861* (Lincoln: University of Nebraska Press, 2004), 5.
2. Nichole Etcheson, *Bleeding Kansas: Contested Liberty in the Civil War Era* (Lawrence: University Press of Kansas, 2004), 27, quoting from the testimony of Andrew H. Reeder before the Howard Commission, Report of the Special Committee to Investigate the Troubles in Kansas, 34th Cong., 1st sess., 1856, Rept. 200, serial 869, 938.
3. Kathy McCormack, "Pierce's Years Are Often Dismissed," *Lincoln* [NE] *Journal Star*, February 17, 2004.
4. For the text of "An Act to Organize the Territories of Nebraska and Kansas," see the appendix and the Library of Congress site (*www.memory.loc.gov/ammem/amlaw/lwsl.html*). For a comprehensive online treatment of the history of Kansas and the Act, see http://www.territorialkansasonline.org.
5. Kermit L. Hall, *The Magic Mirror: Law in American History* (New York: Oxford University Press, 1989), 4.
6. David S. Reynolds, *John Brown, Abolitionist: The Man Who Killed Slavery, Sparked the Civil War, and Seeded Civil Rights* (New York: Alfred A. Knopf, 2005), 504.
7. David F. Holt, *The Fate of Their Country: Politicians, Slavery Extension, and the Coming of the Civil War* (New York: Hill and Wang, 2004), 6. See also 96–115 for a general discussion of the Kansas-Nebraska Act's passage in Congress.
8. Mark E. Neely Jr., *The Last Best Hope of Earth: Abraham Lincoln and the Promise of America* (Cambridge: Harvard University Press, 1993), 32.

Chapter Two

The Kansas-Nebraska Act in American Political Culture

The Road to Bladensburg and the *Appeal of the Independent Democrats*

MARK E. NEELY JR.

When the great political historian Roy F. Nichols assessed the state of knowledge about the 1854 Kansas-Nebraska Act at its centennial, he focused on the problem of "process," the first noun in the first sentence of his essay on the subject and a word that appeared several times thereafter.[1] By "process" he apparently meant that the key to explaining that disastrous piece of legislation lay in understanding the backroom workings of Congress. Nichols acknowledged the difficulty of gaining historical access to some of the key negotiations, but behind his assessment of the state of the subject lay a confidence that historians understood how the American party system worked.

In the intervening half-century, all cause for confidence has vanished. Sweeping new interpretations of political history involving radical periodization schemes and utilizing difficult and sometimes arcane methodologies have come and gone. The atmosphere in which political history is now written could hardly be more different from fifty years ago. Now uncertainty reigns, and a microscopic focus on legislative "process" is but a minor part of political history's concerns.[2]

In other words, political historians seem unsure of their understanding of the political system that produced the Kansas-Nebraska Act, and this sesquicentennial anniversary demands that

we look at areas other than legislative process for a reassessment. This essay will examine the Kansas-Nebraska Act in light of two approaches to political history that have emerged since Nichols wrote. The first is the attempt to understand the era's "political culture," and the second, the idea that "republicanism" best explains the extraordinary political enthusiasms of the 1850s.

Dueling and Political Culture in the 1850s

At the moment when the Nebraska bill passed the Senate and moved to the House of Representatives, a major procedural question arose: whether to refer the bill to the Committee on Territories, controlled by Stephen A. Douglas's allies in the House, or submit it to the Committee of the Whole for debate, which would entail a long delay, because all of the bills ahead of it, forty-nine of them, would have to be disposed of first. Francis Cutting of New York moved to refer the legislation to the Committee of the Whole, and a sharp debate ensued, with John C. Breckinridge, the proslavery stalwart from Kentucky, arguing for the speedier route via the territorial committee. Over that question of process, which committee to send the bill to, a disagreement ensued that led out of the halls of Congress and into the wider political culture, the realm of symbols and values deeply but almost invisibly embedded in American society: Cutting challenged Breckinridge to a duel. Nothing in what has been written about the Kansas-Nebraska Act over the past fifty years really prepares us for understanding that development. But the ideal of "political culture" may help.

Historian Jean Harvey Baker's book *Affairs of Party* introduced the concept of political culture to the study of the politics of the era of the Kansas-Nebraska Act. Although she did not deal with duels in the book, Baker did urge political historians to transfer their gaze from election results of the politicians' "external world" to their "internal world" of "training and socialization," "campaign rituals," and language. Challenges to duels, we might say, formed an unnoticed part of "partisan culture."[3]

Since the New Yorker was the challenger, the Kentuckian en-

joyed the privilege of choosing weapons, and Breckinridge chose rifles. The field of honor was to be Bladensburg, Maryland, because dueling was strictly outlawed in the District of Columbia with stiff penalties attached. The choice of rifles was bound to recall to some the reason the District of Columbia's laws on dueling were strict. The last fatal duel involving members of Congress was fought with rifles in 1838. It resulted in the killing of a congressman from Maine named Jonathan Cilley by a Kentuckian named William J. Graves.

In 1854, a similarly fatal result, very likely to occur when rifles were chosen, was barely avoided. Breckinridge and Cutting did leave Washington to rendezvous at the killing ground, but the affair was settled short of a duel by the intervention of a famous old duelist, Senator Thomas Hart Benton of Missouri. The two weeks' preoccupation of American public opinion with this anachronistic melodrama, in the very midst of the Nebraska debate, suggests how different from modern values were those that dominated the political culture of the 1850s. Although Cutting and Breckinridge were both Democrats, Baker's book on Democratic political culture here proves less useful, surprisingly, than one on the political culture of the Early Republic: Joanne B. Freeman's *Affairs of Honor*. Duels and near-duels, "affairs of honor," were reminiscent of America's first party system, which saw competition between Federalists and Jeffersonian Republicans. The fatal duel between Alexander Hamilton and Aaron Burr has come to stand as one of the mightiest symbols of that early system. The practice of dueling and its underlying value system rested on a concept of gentlemen's honor. Although there was fairly substantial democracy in voting in Jefferson's era, the system was controlled by an aristocratic elite to whom the voters deferred. That elite, as Freeman has shown, was dominated by old-fashioned values that had to be upheld and protected by a willingness to fight duels.[4]

The second American party system, which featured competition between Democrats and Whigs and produced the Nebraska bill as its last mad act, was supposed to be markedly different from its Jeffersonian predecessor. But the Cutting-Breckinridge affair

suggests otherwise. The system was not as modern as previously thought and not as easy to differentiate from the world of the Early Republic.

Two objections to such a conclusion might be raised: first, one threatened duel hardly adds up to a society still dominated by old-fashioned values based on a code of honor. Second, it is well known that dueling outlived the Early Republic in the slave South, and Breckinridge was a Southerner. "By the mid-nineteenth century, it had become sectional just as slavery had," writes historian John Hope Franklin. In other words, historians regard persistent dueling as strictly a Southern problem.[5]

The most suggestive consideration comes in Michael C. C. Adams's brilliant 1978 work, *Our Masters the Rebels*. He noticed, in considering the military abilities of North and South on the eve of Civil War, that "the disparity in the amount of violence between North and South was grossly exaggerated." After citing various challenges to duels (including Cutting's to Breckinridge), murders, and urban crimes, Adams concluded that "most of the qualities labeled as peculiarly Southern were either exaggerated or could be described more accurately as common American traits." He realized that the role of "people antagonistic to slavery" in calling special attention to violence in the South was great. And he specially noted the "uniformly disappointing" quality of the works then available on affairs of honor (Adams wrote before the appearance of Freeman's 2000 book on the Early Republic). Adams also wrote before the advent of most works in gender studies, a problem he himself noted in a new preface to the book when it was reissued as *Fighting for Defeat* in 1992. And he was searching the records for insight on war, not political systems.[6]

The idea that dueling was a Southern problem is a myth that has caused able historians to ignore evidence under their very noses. In one modern book about dueling in "the Old South," the Cilley-Graves duel receives extended treatment, because the Kentuckian Graves challenged the congressman from Maine. In fact, the original formal demand for explanation, which set in motion the steps leading to a duel, came not from the Southerner Graves

but from the New York newspaper editor James Watson Webb, to whom Cilley had referred with slashing disdain in congressional debate.[7] Graves acted originally as Webb's second, bearing the message, and then chose to take personal affront himself at Cilley's way of handling the message from Webb. Labeling that fatal affair "Southern" pushes at least one truculent New Yorker out of the historical picture.

The final outcome of a challenge was hardly predictable. Sometimes the principals fought a duel, and sometimes seconds patched up the quarrel. Sometimes the seconds egged reluctant principals on to bloody combat. Sometimes the seconds fought a duel afterward. A second sometimes took offense at a principal's handling of the negotiations and fought the duel instead of the original principal. The last-named was the case in the Cilley-Graves duel, but it might have come to combat between the original principals (indeed, Webb later fought a duel with someone else). History would have a tougher time, under current assumptions about the sectional nature of dueling, explaining a Webb-Cilley duel, mortal combat between a New York newspaper editor and a Maine congressman.

It is crucial, for the sake of recapturing the values of the era, to adopt Joanne B. Freeman's approach and investigate "affairs of honor," the elaborate ritual of demanding explanation and threatening duels whether the result was a duel or not. By doing so for the era of the Kansas-Nebraska Act, decades after the demise of the first party system, we still find that politicians were often involved in such affairs of honor, not all of which resulted in combat, let alone mortal combat. Indeed the list of potential duelers reads like the roll call of the leaders produced by the system: Benton, of course, and Andrew Jackson, Henry Clay, John Randolph, Abraham Lincoln, James Shields, William Bissell (the first Republican governor of Illinois), and Jefferson Davis.

Labeling dueling as a Southern problem was part of the antislavery myth devised by Northerners before the Civil War. Yet the evidence before them defied sectional explanation. In July 1854, for example, Daniel Sickles and John Van Buren, both prominent

New York Democrats, exchanged the sort of letters that were often preliminary to a duel. These New Yorkers considered killing each other over a speech delivered at Tammany Hall, hardly a place one would look for evidence of "Southern honor." Nathaniel Parker Willis, the gossipy New York journalist, challenged Van Buren later that same year.[8] Less than six months after the passage of the Kansas-Nebraska Act, when the *New York Courier and Enquirer* launched a "violent attack" upon the Democratic candidate for mayor of the city, Fernando Wood, the *Herald* asked in characteristically vicious and mischievous fashion whether it would lead to a libel suit or "another meeting with 'coffee and mahogany stocked pistols for two.'"[9] In California, an argument over Know-Nothingism led to a duel across the bay from San Francisco in Oakland between D. J. Woodlief and Achilles Kewen. Woodlief was killed instantly.[10]

The next fatal duel involving a member of Congress came in 1859 and also involved Californians. Senator David Broderick was killed by David Terry. Broderick spent most of his pre-California life in New York. Terry had come to California from Tennessee and was the challenger. However, Broderick's first challenge in the matter had come not from anyone of Southern roots but from an Englishman. The pluralism of the duel is suggestive of an American phenomenon, not a Southern one. Dueling seems to have been a serious problem in California and New York. Reaching back into the 1840s, one notes another duel involving prominent New Yorkers: Edward Heyward, the privileged son of wealthy New Yorkers, shot and slightly wounded the famous financier August Belmont in 1841.[11]

In truth, all regional explanations seem wanting. Dueling was an American problem. The New Yorker Francis Cutting was the challenger in the Breckinridge-Cutting affair. Explanations based on class values appear wanting as well. The persistence of challenges to duels well into the 1850s takes the practice out of the era of the Early Republic and places it in the era of the "Common Man" in politics. According to Freeman, the Early Republic's "style of politics—self-conscious, anxious, and intertwined with the rites

and rituals of the honor code—fell to the wayside with the acceptance of political parties" in the Jacksonian era and afterward. This needs historical revision. "Institutionalized parties" did not "forever" alter the scheme.[12] The culture of dueling persisted to the very eve of the Civil War as an American political curse in a system in which only men could vote or hold office. Gender and the values associated with it, rather than section or party system, offer the best explanation.

Press commentary at the time of the Kansas-Nebraska Act repeatedly injected the thrusting values of dueling into the discussion. The Washington correspondent of the *New York Tribune*, for example, took such an approach to reporting on Stephen Douglas's response to the *Appeal of the Independent Democrats*, an early anti-Nebraska pamphlet signed by antislavery radicals Salmon P. Chase, Charles Sumner, Joshua Giddings, and Gerrit Smith. The reporter described Douglas's speech to Congress given on January 30, 1854, in traditional terms of physical courage: "The coarse assault of Douglas upon Chase, Sumner, Giddings, Smith and others, who signed the address which so much excited his ire, is easily explained. All of those gentlemen are known to be opposed to dueling. . . . It was therefore with perfect safety that he could assail with personalities men entertaining such views. But if the address had been signed by one such man as Cassius M. Clay, Mr. Douglas is not the man to have applied coarse epithets to its authors."[13] Cassius Clay was a rarity among Kentuckians: an abolitionist. But otherwise he was like Breckinridge, Henry Clay, and other Kentucky politicians, handy with the dueling pistol and apparently eager to use it.

The unwritten rule of avoiding personal insult, such as plainly spoken accusations of lying, applied in Congress because of this phenomenon as well. The code of honor seems to have informed just what was allowed in congressional debate and what would be settled off the floor of Congress. Any such deviation from the rule into personal insult might lead to the dueling ground in Bladensburg. That is why, as any reader of the *Congressional Globe* from this period knows, there was such a great deal of apologizing, insisting

on clarification of personal accusations, and studied avoidance of direct personal insult in debate.

Challenges to duels or the preliminary demands for satisfaction persisted in the North and were by no means confined to political disputes—further proof that the custom owed more to values associated with manliness than to the nature of the particular party system ruling American politics at the moment. Two New York councilmen headed to Hoboken in April 1854, apparently for a duel with "ordinary Western rifle[s]."[14] A lawyer named Peacock, from Chicago, killed a humble Cincinnati dry goods clerk in a duel fought in Kentucky, across the Ohio River from Cincinnati, in September. The next year two members of the Shakespeare Club of New York, F. Leavenworth and J. B. Breckinridge, fought a duel over the rules of the club in Canada, across from Niagara.[15] A rare appeal to the law averted a duel between New Yorkers Edward Marshall and Willard F. Griswold in 1855, when Griswold swore out a complaint against Marshall for "having sent him a written challenge to fight a duel." Police arrested Griswold. The cause of Marshall's challenge to Griswold, as the *Herald* put it, was a "quarrel over a young lady, of course."[16] By June 1855, the *New York Herald* reported "a mania among our 'fast' young men" for dueling.[17]

The underlying cause of the violent "mania" for dueling in the 1850s was a powerful cultural force that persisted despite the law. It was more powerful for some than politics or sectionalism. By the middle of the nineteenth century and the age of the "common man," the cause obviously lay less with social class than with gender norms and ideals. That this persistent violent custom has not been recovered for modern readers by the new social history has nothing to do with North and South, political party systems, or social class. It has to do with misunderstanding the changing ideal of "manliness."

Much of the focus on ideals of manhood in recent historical writing has fallen on the era of Theodore Roosevelt rather than Stephen Douglas. Moreover, the categories of explanation have been, of necessity, somewhat vague. The central idea, that

a middle-class ideal of manliness as "self-control" reigned in the mid-nineteenth century, has its most obvious meaning and power in explaining sexual practices and the falling nineteenth-century birthrate in an era lacking effective birth control. Its cultural meaning is not precise enough to be particularly helpful in dealing with more metaphorical assertions of manliness in the political order in general and dueling culture in particular. Study has focused on the last third of the nineteenth century. Thus Gail Bederman's influential *Manliness and Civilization* offers a "cultural history of gender and race in the United States, 1880–1917." Mark C. Carnes's subtle study of *Secret Ritual and Manhood in Victorian America* covers the development of fraternal organizations from the 1830s to the twentieth century, but it focuses on organizations that enjoyed their heyday in the last third of the nineteenth century. Articles gathered in Carnes and Clyde Griffen's *Meanings for Manhood* characteristically deal with the period 1870–1915 and with such subjects as the Social Gospel, a religious movement that arose only in the 1880s and 1890s.[18]

The unconscious tilt in the debate over gender norms in the society toward the end of the century is obvious in the following characterization of nineteenth-century politics in E. Anthony Rotundo's *American Manhood*:

> Party membership was the key to this culture. Less a matter of choice than of male social identity, party affiliation passed from father to son. Campaigns were mass entertainments which not only celebrated great causes of the past and present but also exalted the shared manhood of its participants. As fellow members of local party organizations, men praised the manliness of their partisan heroes and denounced as effeminate the nonpartisan reformers who opposed the party system. Together, loyalists joined in such masculine campaign activities as military-style parades, torchlight rallies, electoral wagering, barbecues, and logpole raisings. All of these activities were drenched in the free flow of liquor, which the nineteenth century associated with men. Mascu-

line sites such as saloons and barbershops served as polling places. Politics was clearly a masculine world, both in its population and in its favored symbols and rituals.[19]

Any student of nineteenth-century American politics will recognize in this description essential elements of the political culture of "the party era" of the nineteenth century. However, militarized parades, with marching elements such as the "Boys in Blue," were essentially post–Civil War phenomena, as were the nonpartisan reformers typically denounced as effeminate Mugwumps or "snivel service" reformers.[20] By examining the ideas of the end of the nineteenth century, with its cultural ethos of imperialism, sport, muscular Christianity, and militarism, some historians have taken the advocates of such conceptions of manliness at their word and assumed that the previous era had seen industrialism, capitalism, and urbanization produce a shrinking and restrained ideal of manhood as "self-control" or "self-restraint." In truth, the dominant values of the first two-thirds of the century are not clear and not clearly delineated from later values. In none of these pioneering works on gender, more to the point, is dueling a subject of close consideration.

When a historian looks directly at the 1850s to discover the assumptions of gender dominating the era, they prove to be mixed and more traditionally aggressive. Amy Greenberg's *Manifest Manhood and the Antebellum American Empire* argues that there were two dominant ideals of manhood in the period: "restrained manhood" and "martial manhood."[21] Greenberg is concerned mainly with foreign policy and filibustering expeditions, not the violent challenges that grew out of congressional debate, but certainly the dueling mania of the 1850s stands as further evidence of a still-vigorous ideal of aggressive manhood that transcended social classes and political parties.

An increasingly refined and complex understanding of the ideals of masculinity regnant in the 1850s will eventually explain the lingering culture of dueling, still prominent in American politics at the time of the Nebraska bill. That concept is a matter for an-

other essay. What can be said here, however, is that in the 1850s the issue of dueling was gradually being captured for the antislavery cause and gaining its label as a Southern problem born of slave societies with premodern values. The *New York Herald*, which supported the Kansas-Nebraska Act and showed no sign of conscience about slavery in the 1850s, frequently reported duels but never suggested they were a peculiarly Southern problem. By contrast, the *Herald*'s antislavery Whig competitor, the *Times*, reported few duels and emphasized those involving Southern proslavery politicians. Thus the Louisiana Democrat Pierre Soulé's involvement in challenges while a diplomat in Spain in 1854 garnered the attention of the *Times*. The *Times* also noticed an affair of honor between Alabama's Senator Jeremiah Clemens and a Mississippian named Skelton as well as a prospective duel between Skelton and Representative Thomas S. Bocock of Virginia.[22]

The antislavery *New York Tribune* was more pronouncedly sectional in its interpretation of dueling. It completely reversed the onus of responsibility for the Cutting-Breckinridge affair: "The lesson it teaches to the northern members who rejoice in the title of 'Democratic' is substantially this: Support the Nebraska bill or submit to be bullied or shot." Despite the evidence from New York itself, the *Tribune* believed in "the anti-dueling habits of the northern members."[23] And the *Chicago Tribune*, ardently antislavery Whig in editorial slant, likewise invoked a sectional interpretation of dueling even as it reported a duel between "a couple of sap-heads in New York." "It is not often," pontificated the Chicago paper on June 14, 1855, "that the journals of the North are compelled to record the details of such ridiculous tomfoolery." The phenomenon, the Chicago editors insisted, was more common in the South, where "passions of the institution run riot."

Republicanism and the *Appeal of the Independent Democrats*

The *New York Tribune*'s reference to Stephen A. Douglas's embittered response to the *Appeal of the Independent Democrats* reminds us of the importance that modern historians attach to that little pamphlet—and provides a suitable introduction to another way

of understanding American politics that has emerged since Roy F. Nichols assessed the literature fifty years ago. The idea of "republicanism" has been used to explain the reaction to the Kansas-Nebraska Act, although the idea was originally used to explain the reaction to the Stamp Act before the American Revolution. Historians have found many uses for the theory, including explaining how the political parties worked from the Constitution through the Civil War. According to this theory, in the 1850s, as in the Early Republic and the Jacksonian eras, American politicians found it easier to motivate voters by appealing to their fears rather than their hopes or interests. The society was so pluralistic that finding positive programs that would unite a majority was difficult, so leaders relied on creating elaborate images of fearful conspiracies threatening the republic. Against these—monster banks, popish plots, the Slave Power, freemasonry, and such—they rallied the voters to protect their precious liberty. The voters constantly feared enslavement, and the world seemed to teem with conspiracies and plots to overthrow republicanism and enslave the American people at last.[24]

The *Appeal of the Independent Democrats* seems to embody just such an alarmist, hysterical, and irrational argument in opposition to the Nebraska bill. The pamphlet, which alleged a conspiracy on the part of the "Slave Power" against the republic, was drafted mostly by Ohio senator Salmon P. Chase. Other contributors to the document included Massachusetts senator Charles Sumner, as well as Ohio congressman Joshua Giddings. Signers included Ohio congressman Edward Wade, New York's Gerrit Smith (a famous abolitionist serving a term in Congress), and Alexander DeWitt, congressman from Massachusetts. The *Appeal* was intended to awaken the North to the dangerous expansion of slavery threatened by the Nebraska bill. Stephen A. Douglas's proposed statute aimed to organize the territories of Nebraska and Kansas, a large part of the old Louisiana Purchase lying above the 36°30′ line, above which slavery has been forever forbidden by the terms of the Missouri Compromise of 1820.

The *Appeal*, according to current historical treatment, seems to

be outstripping the Kansas-Nebraska Act itself in explaining the coming of the Civil War. The most recent survey on the subject of the slavery extension issue and the coming of the war, for example, includes at the back of the volume selections from key documents, original sources from the period. The Kansas-Nebraska Act itself is given one page, containing only section 14 of the bill and a part of section 19. These crucial sections of the bill voided the prohibition of slavery in the remaining territory acquired in the Louisiana Purchase and promised to receive the states formed from it with or without slavery as the people there prescribed. By contrast with these two paragraphs, the *Appeal of the Independent Democrats* is reprinted in generous excerpts amounting to about four pages. The *Appeal* may not have exceeded the act itself in historical interest generally by a ratio of four to one, but it certainly has assumed great importance. Another historian, writing in 1993, has characterized it as "possibly the most effective public political document of the antebellum period."[25]

The *Appeal of the Independent Democrats* was the first systematic statement of the case that the Kansas-Nebraska Act formed part of a great conspiracy against all of American liberty plotted by what was called in antislavery circles in the antebellum years the "Slave Power." The biographer of Joshua Giddings calls the document "a model of sectional propaganda" and says its authors "were simply the first to react in a typically Northern fashion."[26] That "fashion" has been more particularly described in recent years, since the idea emerged that "republicanism" was a potent force in American history from the Stamp Act crisis through the nineteenth century. The *Appeal* was, in the words of historian Michael F. Holt, the "first to articulate" and "to exploit" the "potential for partisan purposes" that lay in the "powerful theme" of conspiracy against republicanism.

The idea of appealing to voters' fears of a conspiracy of the Slave Power to overthrow the republic rather than to their disapproval of slavery avoided running afoul of the notorious racism of the northern white electorate. It eschewed sympathetic focus on the plight of African Americans in slavery. Instead, as Holt argues,

the *Appeal* seemed to say that "what was ultimately at stake in the sectional conflict was the enslavement of white Americans in the North by despotic slaveholders bent on crushing their liberties, or destroying their equality in the nation, and overthrowing the republican principle of majority rule." In sum, Holt says of this style of political argument, "In this situation it was only natural for ambitious politicians who hoped to build new parties to follow the traditional practice of identifying and crusading against antirepublican monsters. They charged and men believed that powerful conspiracies, contemptuous of the law and abetted by corrupt politicians, had usurped government from the people and were menacing the most cherished values of Americans, their liberty and sense of equality."[27]

Checking press coverage of the Nebraska bill in the 1850s, however, offers a surprise: the *Appeal* does not have a prominence equal to its place in the modern interpretation of the Kansas-Nebraska Act. And traces of its influence on the debate over the act that raged while Congress debated the bill, from January 1854 until its passage in May and immediately afterward, are still more difficult to discover. One of the effects of committing the bill to the Committee of the Whole, "the court of chancery legislate, a sort of Dismal Swamp," was to allow time for public discussion of and protest against the act—a period stretching over some four months. That period provides an important window through which to view the *Appeal*'s significance.[28]

On so important a point as the role of the *Appeal* in shaping that initial period of debate and protest, impressions drawn from leafing through the newspapers of the period will hardly suffice as proof. A more systematic test of the influence of the *Appeal* is demanded. How many copies were printed and distributed as pamphlets? Political pamphlets were not the only way to influence public opinion, so it is useful to know what kinds of newspapers reprinted the text of the *Appeal*. Can arguments from the *Appeal* in later speeches given by its authors on the Nebraska bill be identified? Most important, can the effect of the style of argument found in the *Appeal* be traced in the earliest popular protests

against the Kansas-Nebraska Act, such as in the resolutions drawn up at protest meetings in the North at the time of the debate over the bill in Congress?

An initial check for surviving copies of the pamphlet in libraries and archives today yielded nineteen copies listed in OCLC, which is not a great number for mass-produced printed political materials from the mid-nineteenth century. By contrast, for example, OCLC lists forty-eight copies of Charles Sumner's *The Crime against Kansas*, a famous speech from 1856 that can be used as a benchmark for popularity.

The survival rate in modern archives is hardly a precise measure of circulation, but it is not possible to find out how many copies of the *Appeal* were printed in 1854. The business and financial records of two signers of the pamphlet offer tantalizing clues but no final answers. Salmon P. Chase took pride in the document, calling it "the *most valuable* of my works." He boasted that 500,000 copies were circulated, at a minimum.[29] As the principal author, Chase thus seemed the most likely to have shepherded the pamphlet through production and distribution. His surviving financial records include a bill for setting the type at the *National Era* newspaper office in Washington: two dollars. But nothing else in Chase's papers documents how many were printed subsequently and sent out.[30]

The other likely place to look is in the papers of Gerrit Smith. He was a wealthy abolitionist widely looked to for bankrolling the printing and distribution of antislavery literature. If anyone paid for a big run of these pamphlets, Smith might have. Unlike Charles Sumner or Joshua Giddings, two of the other famous signers of the *Appeal*, Smith was a businessman. He took financial records seriously and retained many of them. His papers include a receipt from the printers of the pamphlet version of the *Appeal*, the Towers brothers' firm in Washington DC, but it was a transaction for other speeches.[31]

It is difficult to find any other hard proof of numbers printed, payments, and distribution of the finished item. One request for copies of the *Appeal* survives in the papers of Charles Sumner.

The abolitionist John Jay, from New York City, asked for "some 250—or less number of the Address on Nebraska" to "enclose . . . at once to our Clergy in N.Y. & Brooklyn—with a circular note asking them to announce to their congregations on Sunday the meeting for Monday." Sumner's answer to the letter is unknown.[32]

A reliable indicator of popularity and broad distribution of political materials in the mid-nineteenth century was publication in German and Welsh, the foreign languages spoken by the largest foreign-speaking ethnic groups of the day in the United States. Contemporaries regarded publication in foreign languages as a sign of popularity. In commenting on the high level of interest in the Nebraska bill, the *Chicago Tribune*, for example, noted on March 6, 1854, that Senator William H. Seward's speech on Nebraska was already printed in five editions, three in English and two in German, with 150,000 copies said to have been ordered. There are German and Welsh translations of *The Crime against Kansas*: *Verbrechen gegen Kansas* and *Y Trosedd Yn Erbyn Kansas*. But there was no German translation of the *Appeal* in any separate printing, let alone a Welsh version.

As for the reprinting of the *Appeal* not separately but in newspapers, here historians may have been misled by the propensity to read the great New York City newspapers. Horace Greeley's *Tribune*, Henry Raymond's *Times*, and William Cullen Bryant's *Evening Post* reprinted the document. But the record is otherwise hardly unanimous. In New York City itself, the *Herald*, which supported the Nebraska bill, did not reprint the pamphlet or, more to the point, comment on, answer, or denounce the *Appeal*. Thurlow Weed's *Albany Evening Journal* did not reprint the text of the *Appeal*, although Weed's ally, Seward, was a major opponent of the Nebraska bill. Neither did the antislavery Whig newspaper, the *Chicago Tribune*. In Pennsylvania, the *Pittsburgh Gazette* reprinted the text of the *Appeal*, but Harrisburg's citizens had no way of knowing about the document unless they saw a pamphlet version or read an out-of-town newspaper.[33]

Moreover, the initial influence of the *Appeal* was diminished by

a parochializing error made by the *New York Times*. That newspaper mistakenly represented the document as the protest of the Ohio delegation in Congress. Chase hastened to correct the error when he spoke in Congress later, but the damage had been done. Even the *Pennsylvania Freeman*, the organ of the Pennsylvania Antislavery Society and an ardent opponent of the Nebraska bill, when it reprinted the text of the *Appeal*, felt called upon to say that the argument therein was just as applicable to the Keystone state as to Ohio.

The reason the *Appeal* was not more universally and systematically reproduced by the press is obvious. Only newspapers already imbued with ardent antislavery impulse were likely to reprint the *Appeal*. And these, typically, already believed in the conspiracy before they saw the *Appeal*. Thus the abolitionist *Pennsylvania Freeman* reprinted the text of the pamphlet on February 2, 1854, but two weeks earlier the *Freeman* had editorialized on "the Aggressions of Slavery," commenting on the "plot" and "crafty scheme" that was afoot to spread slavery. The part of the *Appeal* alleging a plot, in other words, merely invoked a style of argument familiar to abolitionists.

The Independent Democrats, of course, were not any such thing; in fact, they were just the sort of people likely to have such radical views ready to hand. The two most prominent, Chase and Sumner, were not Democrats at all. They were radical Free Soilers, with essentially abolitionist beliefs, who gained office by brokered Democratic and Free Soil deals made in state legislatures that traded state offices for Democrats for U.S. Senate seats for Free Soilers.[34] Only newspapers (outside New York City) identified with the Free Soil Party, or perhaps abolitionist newspapers were very likely to reprint the *Appeal*. The regular Democrats, of course, hated the document, and the Whigs had little reason to promote the work of another party. Some Whig papers did reprint the *Appeal*, but the argument did not sweep the northern Whig press, as more identifiably Whig partisan measures and arguments might have done.

Ultimately this is a search for influence on political behavior.

Failure to find evidence of widespread distribution of the pamphlet or widespread reprinting of it in the partisan press of the day is revealing, for it shows that political behavior must have been influenced by other arguments than those put forward in the *Appeal*. The absence of German-language translations of the pamphlet is therefore important, for one of the most pronounced effects of the Nebraska bill was to bring German Americans out into the streets in rowdy protests. This phenomenon was remarked on, for German Americans were in many areas identified up to that time as Democratic Party supporters. It was surprising to find them out protesting a bill introduced by a leading Democratic senator, Stephen A. Douglas, and endorsed by the Democratic president, Franklin Pierce. Furthermore, German Americans, or so the English-language press reported the story, were given to the most vivid and radical protests. Burning Douglas in effigy, for example, apparently began with German American mass meetings.[35]

What most likely got the initial German American protesters into the streets was not an appeal against the Slave Power and a warning against the threat it posed even to white liberty. It was instead a provision added as an amendment to the bill in the Senate by John M. Clayton that called for limiting the suffrage and officeholding in the territory to native-born Americans. Clayton was apparently already angling for the presidential nomination of the Know-Nothing Party, and this measure brought him considerable attention. It also brought German Americans into the streets.[36] The House of Representatives eventually removed the Clayton Amendment, and it did not appear in the final act, but the long gestation of the Senate version of the Nebraska bill over the winter—because of its referral to the Committee of the Whole and the attendant delays—left time for German Americans to be aroused to passionate opposition to the Nebraska measure as posing a threat to their equal political rights in the territories.

These German Americans were mostly newly arrived in the United States, having come during the "hungry forties" in Europe and as a result of the failed liberal revolutions of 1848. As new-

comers, many had not yet learned English well enough to read a complicated bill for territorial organization, the terms of the Missouri Compromise of 1820 and of the Compromise of 1850, and the complex history of the United States that figured into protests against the Kansas-Nebraska Act. To influence these non-English speakers on the subject, political literature had to be written in German. German-language newspapers must have done so in some instances, and Chase maintained that the *Appeal* "was published everywhere, in English, in German, in other languages." He may have referred here to the German-language newspapers, but it seems likely that he underestimated the impact of the Clayton Amendment.[37]

The great problem posed by the long delay incurred by referring the Nebraska bill to the Committee of the Whole in the House proved not to be the risk of failure of passage in Congress but the time this allowed for the organization of such protests and mass meetings in opposition out in the country. Despite its being winter, meetings sprang up throughout the North. What follows is an analysis of press descriptions, usually brief, of the 115 public meetings held on the Nebraska question at which resolutions were passed. In the accounts of 76 of those meetings, at least one of the resolutions was noted in newspapers, usually quoted verbatim; and in many instances several or all of the resolutions were reprinted in the press accounts. Ultimately, then, these conclusions rest on evaluating 252 resolutions on the Nebraska question.

Determining literary or political influence is notoriously tricky work, requiring agreement on what would constitute true signs of influence and effectiveness. If the proof lies in direct reference to the *Appeal* by title or author, then the answer is simple: it had none. Not a single one of the 252 resolutions from the mass meetings on the Nebraska question made reference to the *Appeal* by name. Surely it would have been easy to say, "We agree with the views printed by Senators Chase and Sumner, and Representatives Giddings, Wade, Smith, and DeWitt when they said that the Kansas-Nebraska Act was a monstrous plot to enslave the North." No one did that—not even the protesters in Ohio and Massachusetts,

the states that Chase, Giddings, Sumner, and Wade represented in Congress.

Of course, it is not fair to stop at that literal point. The newspaper editors, politicians, and mass meetings may have felt the influence of the arguments in the *Appeal* without referring directly to it in their work. What historians have been saying is that the *Appeal* articulated fears or induced them among the Northern electorate widely. The *Appeal* can lay legitimate claim, they say, to having been the first to exploit in protests against the Kansas-Nebraska Act a certain style of argument that had proved effective time and time again in American political history, such as in arousing the people against a British ministerial conspiracy to enslave the colonists by stamp duties and other taxes, against a "Masonic plot" of the 1820s, or against the "Monster Bank" of the early 1830s.

Therefore, to assess the *Appeal*'s influence on 1850s political culture, at least three elements must be found. First, such words as *plot* and *conspiracy* must be present in the reporting. Second, the protests must contain the essential irrational point: that the Southerners had the goal of enslavement of the free North. Third, the plot or conspiracy alleged must stem from the Slave Power, a mythical unit of 250,000 white planters who were thought to agree on the aggressive program pursued by the antebellum South. Otherwise, the influence of the *Appeal* in revealing the power of "republican" arguments cannot be said to be present in early opposition to the Kansas-Nebraska Act.

The crucial concatenation of all three signs of influence from the *Appeal* was not present in the same set of resolutions passed in any of the 76 mass meetings from which resolutions survived in the press coverage of the day. In fact, the word *conspiracy* was not used in any set of resolutions. The word *plot* appeared only twice. The first instance came on February 16 at Faneuil Hall in Boston, but that was a meeting of Independent (or "Free") Democrats. The other instance was a resolution of a meeting held in Marlborough, Massachusetts, on February 20 and reported March 3 in William Lloyd Garrison's newspaper, the *Liberator*, published in the cradle of abolition, Boston. Only the party that originated

the idea in the *Appeal* or the most radical abolitionists were likely to embrace the idea of a "plot" against the republic on the part of Southern slave owners. Marlborough lay only some fifty miles west of Boston, and the unusual "plot" language might also be said to have come from the neighborhood of the *Liberator*.

Likewise, the idea that the North risked enslavement appeared nowhere in the resolutions in so many words clearly expressed. In only one set of resolutions, those adopted at a meeting in Lexington, Ohio, held on February 17, 1854, was it noted that the planters might not distinguish between white and black in their work for advancing slavery. The Ohioans referred to "the morbid craving of a set of men who will and do look upon their servitors as slaves, whether their color be black or white."[38] A resolution from Westmoreland County, Pennsylvania, passed on March 1, 1854, referred to the threat of "nationalizing" slavery that lay in the Nebraska bill. But that did not necessarily mean enslaving Northern whites. Rather, it meant making slavery legal in the North or the federal government's recognizing slavery and not leaving it as an institution created only by state and local governments.[39] The telltale imagery of conspiracy was seldom present. The language of a resolution from a Detroit meeting, held in June 1854, was unusual in stating that the aggressions of the Slave Power had been "clandestinely" perpetrated in the case of the Kansas-Nebraska Act.[40]

One might conclude that those who had seen the *Appeal* often rejected the idea of conspiracy and deemed it unsuitable for public political protest against the Kansas-Nebraska Act. Others simply never saw the *Appeal*. In either instance, the *Appeal* exercised less immediate influence than has been believed. Most of the meetings were got up without distinction of party and thus were not likely simply to repeat the favorite arguments of the Free Soilers and abolitionists. These meetings focused on other issues.

Before examining those issues that the resolutions did in fact stress, it is important to note that the evidence from the 1850s shows that the argument from the *Appeal* at first fell on deaf ears even among those who did read the document. The very New York newspapers that reprinted the *Appeal* did not adopt its style

of argument in their own editorial pages. The three essentials missing from protest meeting resolutions were not present in the papers either. On January 24, 1854, in the very issue that reprinted the text of the *Appeal*, the *New York Times* pointed out that the Nebraska bill "*does not come from the South.* It is not the growth of Southern sentiment;—it is not prompted by Southern ambition;—we do not believe it is sustained by the sober judgment of the Southern people. It is the hellish spawn of demagoguism and partisanship." However one characterized the argument in the *Appeal*, the idea that the South was behind the attempt to expand slavery by means of the Kansas-Nebraska Act was essential, but it was not immediately present in the pages of the *Times*. Instead, the *Times* interpreted the Nebraska bill as a product of ravenous presidential ambition. This political explanation of the bill—rather than the one emphasizing dangerous sectional conspiracy by the Slave Power—held considerable sway at first, for the antiparty sentiment of the period, as Michael F. Holt has shown, was at a record high, and dismay with political parties and the ambitions of party politicians ran rampant in the North. The *Times* had "no doubt that SENATOR DOUGLAS would, at any moment, sacrifice any public principle, however valuable, and plunge the country into foreign war or internal dissension, however fatal they might prove, if he could thereby advance himself a single step toward the Presidential chair."[41]

The *New York Tribune* was the most antislavery of the three famous papers in the city that republished the *Appeal*. Less than a year earlier it had severed formal connection with the Whig Party and now considered itself an antislavery newspaper.[42] Nevertheless, the *Tribune* at first also took the view that the "Nebraska bill is a Presidential scheme." At the end of February, the *Tribune* concluded that the "Nebraska measure affords the most conclusive evidence of the utter rottenness of the politicians who bear sway at Washington, and furnishes the most melancholy proof of the deteriorated and sinking character of our party politics."[43]

The *New York Evening Post* took its initial position on the Nebraska bill from the *Appeal* but not from the arguments in the

pamphlet made famous by modern writing on it in the "conspiracy" vein. Instead, the *Evening Post* was impressed with the proof of geographical extent and strategic location of the Nebraska Territory. This newspaper also took the most overtly racist interpretation of the Nebraska measure, calling it the "bill for Africanizing the heart of the North American continent."[44]

The *Evening Post* was thus certainly influenced by the *Appeal*, but the nature of that influence shows that its direction has been misinterpreted. It was not so much the irrational cries of conspiracy that took hold at first as it was two other powerful points: a sense of betrayal by the South and a commonsensical grasp of the geography encompassed by the Nebraska Territory.

Indeed, after the initial denunciation of the Nebraska bill as a "monstrous plot," the authors of the *Appeal* said, "Take your maps, fellow citizens, we entreat you, and see."[45] It is easy to know today, from the useful maps inserted in basic textbooks of American history in the chapters on the coming of the Civil War, what area was affected by the revocation of the slavery restrictions of the Missouri Compromise. But Americans at the time of the Nebraska bill's introduction apparently lacked any clear idea.

Salmon P. Chase himself, as he hurriedly drafted the *Appeal*, badgered the head of the U.S. General Land Office for a precise description of the boundaries of the territory covered by the Nebraska bill.[46] He sensed that the dimensions would be impressive. And indeed a major feature of the first mass meeting held to protest the Kansas-Nebraska Act, one led by merchants and bankers in New York City on January 30, 1854, was a gigantic map, 21 feet by 17 feet, suspended from the ceiling of the Tabernacle, the big church where the meeting was held, and drawn by the famous printer of maps, J. H. Colton. The organizers of the protest presented the map "for the better appreciation of the extent of the territory commonly called Nebraska, which is more than ten times as large as New York, and the importance of its position, separating, as it does, the Atlantic and Pacific sections of the northern states."[47] Chase's effort to establish the boundaries and his subsequent calculations of the dimensions of the area had

genuine effect. The authors of the *Appeal* impressed Northerners with the vast amount of territory to be opened to slavery by the act. The editors of the *New York Evening Post*, in commenting on the *Appeal* when they reproduced the document in their paper on January 25, remarked, "It expresses clearly and powerfully the dishonest pettifogging by which the friends of Douglas's bill attempt to make the Compromise of 1850 a pretext for opening a region, hitherto closed against slavery by the barriers of laws, extending the area of that blighting institution over twelve degrees of latitude to the utmost northern bound of our republic, and dividing the free states of the Atlantic Coast from those on the Pacific, by all the vast region between the Missouri and the summits of the Rocky Mountains. The geographical respects of the question are admirably well stated." Resolutions at protest meetings held after the initial one in New York City sometimes commented on the 485,000 square miles that Chase gave as the total area affected.[48]

Newspapers carried precious few illustrations in this early period, when such images had to be carved by hand into wooden blocks, but the map proved too important to let such difficulties get in the way. The *New York Tribune* printed a map in its issue of April 24, 1854. In it we can see the genius of Chase's geographical inquiries and calculations. He had found a way to make the map a threat rather than a finding aid. The map that appeared in the *Tribune* seemed ominous. The deceptive image suggested that the area of freedom in the United States consisted of a sliver of New England and middle states ominously surrounded by slave states or territories now opened to the possibility of slave migration (all shaded in gray or black whether their slave status had been determined as yet or not) and separated by a vast continent from the other little sliver of white on the map, California. The map continued to appear in 1856 campaign literature printed for the Republican Party (see map 1).[49]

Extent was everything in this visual argument, and isothermal considerations were nothing; none of the early protestors at mass meetings pointed out that the arid quality of most of these lands likely dictated a form of agriculture not suitable to the use of

MAP 1. "Freedom, Slavery, and the Coveted Territories," from *The Border Ruffian Code in Kansas* (New York: Greeley & McElrath, 1856). Courtesy of the Division of Rare and Manuscript Collections, Cornell University Library.

slavery. For now, isothermal arguments were the lullabies sung by Northern Democrats. Those who became Republicans would come to adopt them only eight years later when explaining to the electorate that the Emancipation Proclamation did not necessarily entail the migration of African Americans, suited to the warm climate of the South, to the chilly North.

The impressive and frightening geographical image suggested by the *Appeal* and by the *Tribune* map provided the theme of a major speech on the Nebraska bill given by one of those senators who signed the *Appeal.* Charles Sumner made the most of it in his key speech against the Kansas-Nebraska Act delivered in the Senate on February 21, 1854. "The Landmark of Freedom" invoked a reference to a biblical passage from Deuteronomy about removing a neighbor's "landmarks." Sumner thus invited focus on the geographical.[50]

All in all, the most common complaint against the Kansas-Nebraska Act embodied in the protest meetings was neither the fearful one based on geography nor the hysterical one alleging conspiracy. Most often, the resolutions invoked the language of honor: the Kansas-Nebraska Act was a violation of "plighted faith" or of "sacred" or "solemn compacts." Thirty-six of the 252 resolutions made such protest. This constituted a conservative and not a radical ground for complaint, because under such an umbrella of protest could gather those opposed to the disruption of the Compromise of 1850 and its supposed settlement of sectional agitation with those who resented the Slave Power. In other words, it was ground on which those who opposed further agitation of the slavery question might cooperate with those who wanted to agitate the question more.

People at the time recognized the position as conservative, and in general historians have underestimated the importance of the conservative protest against the Kansas-Nebraska Act—something certain to be obscured by emphasis on the effectiveness of the *Appeal*. Thus an antislavery advocate named Samuel Lyman wrote Charles Sumner: "I trust that you are in no danger of being misled by the published accounts of Northern demonstration in regard to the infamous scheme under discussion & that you have not failed to notice that all the speeches & resolutions of meetings, in which the Whigs took part, a very low & mercantile view of the subject has been exhibited—mere wailing howl about violation of plighted faith,—and are highly perfumed with the 'odor' [odium?] of the 'dollar'—. . . On the undying question of humanity little is said & less felt."[51] The appraisal was certainly accurate, from an antislavery point of view, in regard to the first anti-Nebraska protest meeting, held in New York City, on January 30, 1854. The antislavery *New York Tribune* characterized the initial call for that meeting this way: "The call is signed almost exclusively by our most conservative capitalists and business men, original and steadfast friends of the Adjustment of 1850, who protest against the bill of Douglas and his confederates as a wanton, aggressive revival of agitation and irritation concerning Slavery."

Such a meeting could hardly "be expected to characterize this Nebraska conspiracy in the language it deserves."[52]

Nevertheless, the conservative meeting had great influence. It was followed, in a show of solidarity despite differences of social class, by a mass meeting called by mechanics and workingmen in the city on February 18. "The People's Meeting," as it was named, was addressed by men who were certainly radical, John P. Hale of New Hampshire and the Reverend Henry Ward Beecher, but their first resolution stated, circumspectly: "That we, the mechanics and working men of New-York, heartily concur in the stern protest recently uttered in this place by the great meeting called by the leading merchants and bankers."[53]

The idea that political promises ought to be honored lay at the bottom of many a protest, and 13 of the 252 resolutions used the very words *honor* or *honorable* or *dishonorable*. Such language connoted something a little different from the commercial language of contract—honoring bargains legally and fairly made; indeed, commercial language appeared in only four of the resolutions. In certain circumstances, however, this conservative language could embody as serious consequences for the Union as the most single-mindedly antislavery stance. The *New York Tribune*, for example, characterized the Nebraska bill as "injurious to northern interests and . . . degrading to northern honor." To be sure, such arrogance was to be expected from the Southern enemy. The same paper later said, "This course of insult and domination is but preparatory to what may be hereafter expected to follow under the unobstructed rule of the slave power." The *Tribune* raised an American flag above its offices in May, as passage of the bill neared, and proclaimed, "We hope never to strike it if that act shall herald the capitulation and dishonor of the Northern Representatives in this great struggle."[54]

Other important ideas were present, of course. The term *free labor*, or that concept expressed in other words, appeared in a dozen sets of resolutions. Nine resolutions denounced the Slave Power. Only a few alleged that the Nebraska measure was the product of Douglas's vaulting presidential ambition or the ambitions of other politicians. Much of the language of the resolutions was

straightforward, expressing dismay at the revocation of the antislavery provisions of the Missouri Compromise and appealing to Americans to reject past party differences and unite in protesting the Nebraska bill. They often invoked the myth of an antislavery past for the United States, maintaining that the country's founders had objected to the spread of slavery. Many objected to slavery as a violation of human rights. The heart of the mass protest lay in a world of faith and honor and political compacts.

The principal author of the *Appeal* himself, Salmon P. Chase, came to emphasize that very idea. He led the fight against the Kansas-Nebraska bill in the Senate, and when he came to give his own set speech against the measure on March 2, 1854, he entitled it "Maintain Plighted Faith."[55] The other major Senate speech in opposition, given by William H. Seward, who despite his reputation for antislavery radicalism took similarly circumspect ground on the Nebraska bill, was entitled "Freedom and Public Faith." Again, those who knew the *Appeal* well did not necessarily take from it the conspiratorial argument.

The lingering fondness for a vocabulary of honor and faith was visible in the sixth of seven resolutions adopted by the protest meeting held in Orange County, New York. It resolved "irrespective of party considerations to resist with manly patriotism" the "violation of a sacred compact."[56] Such language returns us to the basic and old-fashioned assumptions about manliness and honor with which this essay began.

Nowhere was this rhetoric of manliness more pronounced, surprisingly, than in Massachusetts. There Senator Sumner's principled denunciation of the Kansas-Nebraska Act was repeatedly contrasted with the timid objections raised by the other senator from the state, the Whig and presidential hopeful Edward Everett. Everett voiced a cautious isothermalism in his speech out of harmony with most anti-Nebraska protests. Admirers of Sumner like John H. Clarke of Providence, Rhode Island, singled out Sumner's "manly effort in Support of human liberty."[57] Amasa Walker drew a contrast commonly made, in unsparing language, "You are very fortunate in having Everett for a colleague; his base

servility & meanness make a strong contrast to anything like common manhood & magnanimity."[58] Referring to Everett and other Whigs, E. A. Stansbury in New York found some consolation in Stephen A. Douglas's bill: "Scoundrels like Douglas, can't help doing *some* good in spite of themselves. His good deed is the smoking out of poltroons [cowards] who might else have passed for men."[59] William H. Harris focused on the negative side, employing sexual imagery to contrast Sumner with his "colleague, whose tame, impotent & cringing course has disgraced himself & his constituents."[60]

Echoes of the Massachusetts debate were heard elsewhere. In an editorial entitled "Backbone Wanted," the *New York Tribune* denounced the "icicle" Senator Everett and expressed disgust with moderation: "With what an effeminate, and soft and flattering voice he pleads a case worth a giant's struggle!" The opposite qualities were needed in the North. The *Tribune* held "to the belief that there is manhood and determination enough among the Northern opponents of this great enormity to take on the harness of a resolute opposition, and amid every obstacle, and through every peril, manfully fight it to the death, even if that contest shall lead to the brink of civil revolution."[61] The fact that Sumner began to emerge into prominence because of his lack of timidity and because of his manliness in denunciation may have played a role in the tragedy that would meet Sumner two years later. Then Sumner's denunciatory speech "The Crime against Kansas" caused South Carolinian Preston Brooks to beat him with a cane on the floor of the Senate. And that observation of the rules of affairs of honor (Brooks deemed Sumner no gentleman and therefore not an equal for challenging to a duel) played a major role in galvanizing the North against the aggressions of the Slave Power and bringing together the Republican Party.[62]

Conclusion

The process of formation of the Republican Party did not in fact begin and end with appeals to the *code duello*, as it may appear to have done in this essay. But the shadow cast by the dueling

ground over the debate on the Kansas-Nebraska Act and the subsequent clashes between North and South in Kansas should lead us to see how imperfectly previous attempts to comprehend the "process" have succeeded. To understand the political system of the mid-1850s, historians must now include more than the mere actions of congressional leaders. Our understanding must reach the beliefs, sentiments, and behavior of masses of politically active people. The 1850s were obviously more dominated by a premodern outlook than anyone has heretofore imagined. In essence, a reconsideration of the nature of the second American party system is required.

The political culture of the era is not satisfactorily understood in terms of congressional bargaining and legislative "process," on the one hand, or in terms of extravagant appeals to "republican" fears of subversion and conspiracy by alien "powers," on the other. Likewise, attempts to comprehend the masculine world of the politicians and voters of the era have not quite reckoned with the persistent sway of honor and calls to violent account for its violation in the political culture of the 1850s. When at last we understand the political culture of the second American party system, then the Kansas-Nebraska Act—maybe at the two hundredth anniversary—will be fully understood.

Notes

1. Roy F. Nichols, "The Kansas-Nebraska Act: A Century of Historiography," *Mississippi Valley Historical Review* 43 (September 1956): 187–212.
2. Michael F. Holt, "An Elusive Synthesis: Northern Politics during the Civil War," in James M. McPherson and William J. Cooper Jr., eds., *Writing the Civil War: The Quest to Understand* (Columbia: University of South Carolina Press, 1998), 112–34.
3. Jean H. Baker, *Affairs of Party: The Political Culture of Northern Democrats in the Mid-Nineteenth Century* (1983; reprint, New York: Fordham University Press, 1998), 12.
4. The party system in that early time has been characterized by Ronald P. Formisano's "Deferential-Participant Politics: The Early Republic's Political Culture, 1789–1840," *American Political Science Review* 68 (June 1974): 473–87. Freeman shifts the focus from the deference of the voters to the lingering aristocratic values of the elected elite. Joanne B. Freeman, *Affairs of Honor: National Politics in the New Republic* (New Haven: Yale University Press, 2000).

5. John Hope Franklin, *The Militant South, 1800–1861* (1956; reprint, Urbana: University of Illinois Press, 2002), 61. See Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982), esp. 350–61; Steven M. Stowe, *Intimacy and Power in the Old South: Ritual in the Lives of the Planters* (Baltimore: Johns Hopkins University Press, 1987), esp. 5–49; and Jack K. Williams, *Dueling in the Old South: Vignettes in Social History* (College Station: Texas A&M University Press, 1980). Franklin's outlook still reigns: "Only in the ante-bellum South did men in public life persist in defending their honor by dueling" (48). Wyatt-Brown was correct to argue that dueling as an honor-bound value was "pre-modern," but it was not confined to the South (see Wyatt-Brown, xvii).
6. Michael C. C. Adams, *Our Masters the Rebels: A Speculation on Union Military Failure in the East, 1861–1865* (Cambridge: Harvard University Press, 1978), reissued as *Fighting for Defeat: Union Military Failure in the East, 1861–1865* (Lincoln: University of Nebraska Press, 1992), 43–47, 207–8.
7. Stowe, *Intimacy and Power*, 40–41.
8. *New York Herald*, July 25, 1854. The Sickles-Van Buren exchange occurred in Liverpool, England. For the letters and the resolution of that affair, see *New York Herald*, July 28 and August 7, 1854.
9. *New York Herald*, November 3, 1854.
10. *New York Herald*, December 3, 1854. Woodlief was born in Virginia, moved to Texas, and had lived in California since 1849.
11. Don C. Seitz, *Famous American Duels with Some Account of the Causes That Led Up to Them and the Men Engaged* (1929; reprint, Freeport NY: Books for Libraries Press, 1966), 28, 317–26.
12. Freeman, *Affairs of Honor*, 283–84.
13. *New York Tribune*, February 2, 1854. The *Tribune*, naturally, believed in and helped to create the myth of dueling as a Southern problem, so the letter continued its discussion of Douglas this way: "In all his Congressional career he has never been known to apply such terms to a Southern opponent—a very remarkable fact which can only be explained on the above theory." On Douglas's speech, see Robert W. Johannsen, *Stephen A. Douglas* (1973; reprint, Urbana: University of Illinois Press, 1997), 418–22.
14. *New York Herald*, April 16, 1854.
15. *New York Herald*, September 7, 1854; and *Chicago Tribune*, June 12, 1855. A duel between politicians in the Nebraska Territory was averted in 1855; the parties were a Michigander and a Virginian, apparently. See the *New York Herald*, April 3, 1855. For Breckinridge and Leavenworth, see *New York Herald*, June 8, 1855.
16. *New York Herald*, March 3, 1855.
17. *New York Herald*, June 12, 1855.
18. Gail Bederman, *Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1880–1917* (Chicago: University of Chicago Press, 1995); Mark C. Carnes, *Secret Ritual and Manhood in Victorian America* (New

Haven: Yale University Press, 1989); Mark C. Carnes and Clyde Griffen, eds., *Meanings for Manhood: Constructions of Masculinity in Victorian America* (Chicago: University of Chicago Press, 1990).

19. E. Anthony Rotundo, *American Manhood: Transformations in Masculinity from the Revolution to the Modern Era* (New York: Basic Books, 1993), 218–19.
20. Joel Silbey identifies the "party era" in *The American Political Nation, 1838–1893* (Stanford: Stanford University Press, 1991). See also Richard Jensen, "Armies, Admen, and Crusaders: Types of Presidential Election Campaigns," *History Teacher* 2 (January 1969), 33–50, on distinctive styles of political campaigns.
21. Amy S. Greenberg, *Manifest Manhood and the Antebellum American Empire* (New York: Cambridge University Press, 2005), esp. 11–14.
22. *New York Times*, January 26, February 27, and March 4, 1854. The tendency in literature on the second American party system to treat dueling as a Democratic problem the Whigs avoided does not seem particularly compelling: James Watson Webb was a Whig, as were Abraham Lincoln and some of the Southern duelists of the period such as Henry Clay. See Daniel Walker Howe, *The Political Culture of the American Whigs* (Chicago: University of Chicago Press, 1979), 128–29. Duels often stemmed from partisan disputes; naturally that required the involvement of members of both parties.
23. *New York Tribune*, January 14, 1854, February 2, 1854 (explaining that Douglas never dared use strong language against Southerners who might challenge him to a duel), March 28, and March 29, 1854. The *Tribune* did report a duel on Staten Island between two "bloody-minded youths from New-York" caused by "a woman" (March 28, 1854).
24. See Michael F. Holt, *The Political Crisis of the 1850s* (New York: W. W. Norton, 1978), esp. 5.
25. Michael F. Holt, *The Fate of Their Country: Politicians, Slavery Extension, and the Coming of the Civil War* (New York: Hill and Wang, 2004), 140–45; Richard J. Carwardine, *Evangelicals and Politics in Antebellum America* (New Haven: Yale University Press, 1993), 47.
26. James Brewer Stewart, *Joshua R. Giddings and the Tactics of Radical Politics* (Cleveland: Press of Case Western Reserve University, 1970), 224–25.
27. Holt, *Political Crisis*, 5, 152.
28. *New York Tribune*, March 3, 1854.
29. Salmon P. Chase to E. L. Pierce, August 8, 1854, in Salmon P. Chase Papers, ed. by John Niven, Claremont Graduate School and NHPRC, 1987, reel 10. The reference to 500,000 copies appeared in Chase to John P. Bigelow, September 23, 1854. Chase wanted to emphasize the role of the *Appeal* because he was still trying against heavy odds to maintain an independent organization for the Free Soilers, and the *Appeal* had the quality of showing the importance of independence from the Democratic and Whig organizations in leading antislavery protests.
30. See the document at July 27, 1854, in Chase Papers, reel 41.

31. Note of payment to John T. and Lem. Towers, July 24, 1854, Gerrit Smith Papers, Syracuse University, reel 76.
32. John Jay to Charles Sumner, January 19, 1854, Charles Sumner Papers, ed. Beverly Wilson Palmer, Houghton Library, Harvard University, reel 10.
33. The report on newspapers must be qualified by noting the lamentable point that the standard microfilmed runs of even the most important papers are based on broken sets. Part of the issue of the *Chicago Tribune* for January 28, 1854, for example, is missing. See the *Pittsburgh Gazette*, January 28, 1854. For Harrisburg, I checked broken runs of the *Harrisburg Herald*, *Harrisburg Keystone*, and *Harrisburg Telegraph*.
34. David Herbert Donald, *Charles Sumner and the Coming of the Civil War* (New York: Alfred A. Knopf, 1960),189–204; John Niven, *Salmon P. Chase: A Biography* (New York: Oxford University Press, 1995), 118–23.
35. *Chicago Tribune*, March 17, 1854.
36. *Chicago Tribune*, March 22 and 25, 1854; *New York Tribune*, March 3, 1854. For another political interpretation of the amendment, see the *New York Tribune* issue of March 10.
37. Salmon P. Chase to Ichabod Codding, April 22, 1854, Chase Papers, reel 10.
38. *New York Tribune*, February 28, 1854.
39. *New York Times,* March 10, 1854.
40. *New York Tribune*, June 13, 1854.
41. *New York Times*, January 24, 1854; see Holt, *Political Crisis*, 101–38.
42. See *National Antislavery Standard*, January 21, 1854.
43. *New York Tribune*, February 3 and 28, 1854.
44. *New York Evening Post*, January 25, February 9, 1854.
45. Salmon P. Chase et al., *Appeal of the Independent Democrats in Congress, to the People of the United States. Shall Slavery Be Permitted in Nebraska?* (Washington DC: Towers' Printers, 1854), 1.
46. Salmon P. Chase to John Wilson, January 11, 1854, and Wilson to Chase, January 13, 1854, Chase Papers, reel 10.
47. *New York Tribune*, January 25, 1854. The antislavery activist John Jay claimed he got up the meeting of prominent citizens and ordered the map made. See John Jay to Charles Sumner, January 19, 1854, Sumner Papers, reel 10.
48. See, e.g., the Faneuil Hall meeting (*New York Times*, February 20, 1854), Williamsburg, New York, meeting (*New York Tribune*, March 1, 1854), and Orange County, New York, meeting (*New York Tribune*, March 10, 1854).
49. See, e.g., *The Border Ruffian Code in Kansas* (New York: Greeley & McElrath, 1856) and another piece, emphasizing the irrational enslavement of the North in its title, *The New "Democratic" Doctrine. Slavery Not to Be Confined to the Negro Race, but to Be Made the Universal Condition of the Laboring Classes of Society* (New York: John N. Oliver, 1856). For a reproduction of the map from the *Life of John Charles Frémont* (1856), see Robert F. Engs and Randall M. Miller, eds., *The Birth of the Grand Old Party: The Republican' First Generation* (Phila-

delphia: University of Pennsylvania Press, 2002), 31. The caption notes the map's widespread use and its "menacing" and "threatening" qualities.

50. Donald, *Sumner*, 254–57.
51. Samuel F. Lyman to Charles Sumner, February 25, 1854, Sumner Papers, reel 10.
52. *New York Tribune*, January 30, 1854.
53. *New York Tribune*, February 20, 1854.
54. *New York Tribune*, April 18, May 11, and May 13, 1854. On more commercial values associated "free labor" in the later Republican Party, see Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York: Oxford University Press, 1970).
55. Niven, *Chase*, 151–52.
56. *New York Tribune*, March 10, 1854.
57. John H. Clarke to Sumner, April 15, 1854, Sumner Papers, reel 11.
58. Amasa Walker to Sumner, April 25, 1854, Sumner Papers, reel 11..
59. E. A. Stansbury to Sumner, February 23, 1854, Sumner Papers, reel 10. See also E. Smalley to Sumner, March 14, 1854, for reference to "your bold & manly avowals against the Nebraska measure," in Sumner Papers, reel 10.
60. William H. Harris to Sumner, March 18, 1854, Sumner Papers, reel 10.
61. *New York Tribune*, February 27 and May 8, 1854.
62. Donald, *Sumner*, 290–91.

Chapter Three

Nebraska and Kansas Territories in American Legal Culture

Territorial Statutory Context

BRENDEN RENSINK

In commemorating the sesquicentennial of the 1854 Kansas-Nebraska Act, it is important to understand not only the events that led to and were caused by its passage but also the very organic act itself.[1] This piece of national legislation caused great tension in the halls of Congress before being passed and also great tension in the very territories it organized after its passing. The most shocking example of these tensions was the mini civil war, commonly known as "Bleeding Kansas," which some historians suggest represents the first battles of the much greater Civil War. Nearly seventy years of similar territorial organic acts had been passed, but none had created such results. Was the text itself somehow different or revolutionary in form?

As this analysis will show, the Kansas-Nebraska Act of 1854 was not a revolutionary piece of legislation. Quite to the contrary, it closely followed the precedent of previous territorial organic acts. Even the doctrine of popular sovereignty, which clearly led to the tragic consequences, was not a new principle. The context of its application to Nebraska and Kansas, however, was new. The Kansas-Nebraska Act, though a very ordinary piece of legislation, and the geopolitical context surrounding its passage created a volatile catalyst for division, contention, and ultimately the attempted disintegration of the Union.

It is formally titled "An Act to Organize the Territories of Nebraska and Kansas," and it is found in *Statutes at Large* 10 (May 30, 1854): 277–90. The Kansas-Nebraska Act consists of two parts: one dealing with the territory of Nebraska and the other dealing with the territory of Kansas. Except for the different geographical boundaries, the two parts of the statute are identical. This article will use examples from the Nebraska side of the document, sections 1–18. The text is reproduced here in the appendix following chapter 8.

Definitions and Structure

Before delving into the text of the Kansas-Nebraska Act, several terms require definition. First is the legal term *organic act.* Although used in many ways, *territorial* organic acts were pieces of legislation that geographically created and politically organized new lands within the United States. Early in the history of the Republic, what was to be done with the unorganized lands in the West was a topic of sharp debate. Would those lands be autonomous? If not, would they be controlled by state or federal governments? Also, would the residents thereof be accorded the same rights and privileges as other American citizens?[2] These are but a few of the issues posed. Starting with the Northwest Ordinance, or Ordinance of 1787, the first territorial organic act, the United States established the territory as a distinct geopolitical entity that functioned as a preliminary stage to statehood. Territories therefore served a transitional colonial role between unorganized land and official statehood. Their governments were similar to their state counterparts, but territorial officers were under the control of the federal government. They played an integral role in the development of the United States, and the organic acts that created them tell much of the political and pragmatic circumstances that framed their organization.

To better understand the organic act that created the territories of Nebraska and Kansas and its explosive effects, it must be examined in conjunction with those acts that preceded it. A simultaneous discussion of previous organic acts and how the

MAP 2. The American West after the Compromise of 1850.

Kansas-Nebraska Act relates to them places the 1854 act in its legal historical context. Although many territories were created before 1854, only a few organic acts represented significant new developments in the territorial system, or what might be called *foundational* organic acts. They illustrate the historic patterns and precedents into which the 1854 act fits. Significant organic acts that preceded the Kansas-Nebraska Act include the Northwest Ordinance (1787), the Orleans Territory Act (1804), the Wisconsin Territory Act (1836), and the New Mexico and Utah Territory Acts (1850) (see map 2). These together with the Kansas-

Nebraska Act will be analyzed thematically, considering geopolitical boundaries, territorial officials and government, and the territorial government's relationship with the federal government; qualifications for suffrage, elections, and eligibility to hold office; Indian affairs; and finally the question of slavery.[3] By tracing the development of policies and patterns in the territorial organic acts predating 1854, and how the Kansas-Nebraska Act compares with them, a greater understanding of the act itself and its ramifications can be achieved.

Geography, Political Office, and Federal Authority

One of the first issues dealt with in most territorial organic acts is a determination of geographical boundaries. The Kansas-Nebraska Act of 1854 does so in its first section, drawing a line westward from where the Missouri River intersects the 40th parallel north latitude to the border of the previously created Territory of Utah at the summit of the Rocky Mountains, then northward to the 49th parallel north latitude, then eastward along that parallel to the Minnesota state border, and finally southward along that border to the starting points. The territory encompassed by this border was to be the territory of Nebraska. The borders of Kansas Territory were defined in similar fashion (see map 3). Besides defining the borders of the territory, the act also added an important proviso: "That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States."[4] Not only were the present boundaries dictated by the federal government, but future changes to those boundaries were also completely under federal control.

This idea of federal control over territorial boundaries and the changing of those boundaries was alluded to in the first lines of the Northwest Ordinance of 1787. After pronouncing that the region would be governed initially as one single district, it stipulated that the area was "subject however to be divided into two districts

MAP 3. The American West after the Kansas-Nebraska Act of 1854.

as future circumstances may in the Opinion of Congress make it expedient."[5] Although it does not explicitly refer to geographic boundaries, the idea of federal control over spatial organization, whether political or territorial boundaries, is established. The proviso cited above from the Kansas-Nebraska Act, which is much more explicit in its purpose of controlling geographic territorial boundaries, is taken almost directly from the preceding organic acts that created the territories of Wisconsin (1836), New Mexico (1850), and Utah (1850). In fact, the proviso is identical to that found in the Wisconsin Territory Organic Act, and the only differ-

MAP 4. The American West after Nebraska Statehood (1867).

ence in New Mexico and Utah's is that the ending phrase in the Kansas-Nebraska proviso of "any other State or Territory of the United States" is changed to "any other Territory or State."[6]

A comparison of the original Nebraska Territory with the present state of Nebraska illustrates both the flexible nature of and federal control over territorial borders. The original Nebraska Territory included all of current Nebraska, most of Montana and Wyoming, and sections of Colorado, North Dakota, and South Dakota (see map 3). Then in 1861 the entire northern half of the territory was organized into Dakota Territory. The remaining Ne-

braska Territory was similar to the current state boundaries with the exception that the northern and southern borders extended westward to encompass much of present southern Wyoming (see maps 3 and 4). Current Nebraska borders were solidified in 1867 when it attained statehood. Utah, Oregon, Washington, Dakota, New Mexico, Kansas, and other territories underwent similar alterations in their borders. As areas became more populated, political circumstances changed and economies evolved. Territories were divided and reorganized by the federal government to better serve the transforming demographic. Federal control over such changes was necessary to accommodate the ever-changing needs of the expanding nation (see map 4).

As evident in many of their titles, organic acts were primarily meant not to organize territories geographically but to provide or establish a government. The selection of government officials, their duties and authorities, and a delineation of the powers of territorial governmental bodies encompass most of the language in territorial organic acts. As would be expected, these enumerations of rights and powers of government are both lengthy and complex, but a few key subjects deserve consideration—namely, the selection of territorial governors and secretaries, the powers vested in them, their term limits, and the balance between their overall authority to govern the territory versus the authority of the federal government in territorial affairs. The historic evolution of these political matters laid the grounds for the system of territorial government that both Nebraska Territory and Kansas Territory inherited.

Starting with the Northwest Ordinance, organic acts addressed the nature and powers of the governorship. The Ordinance of 1787 established the following guidelines: the governor holds the executive authority in the territory, including the power to approve or veto legislation; the governor is federally appointed; the governor's service is restricted to a term limit; the governor may be removed by federal authority; and the governor acts as the commander-in-chief of the militia and appoints all officers under the rank of general officers.[7] Established as such in 1787, gubernatorial powers

and duties had changed surprisingly little by 1854. The only major alterations were in the 1804 Orleans Territory Act's addition to the governor's powers to "grant pardons for offences against the said territory, and reprieves for those against the United States."[8] Subsequent organic acts retain this exact wording. Also, the New Mexico Territory Act of 1850 increased the governor's term from three to four years.[9] Despite these minor modifications, the duties and powers of the governor remained much the same in all organic acts from 1787 through 1854 and in large part retained the same phraseologic and semantic forms.

The Kansas-Nebraska Act's policies related to the territorial secretary, the governor's stand-in, also followed the traditions of previous organic acts. The concepts of federal appointment or removal, similar to those of the governorship, and term years are found in nearly identical form throughout those organic acts preceding it. Differences occurred from the Northwest Ordinance apportioning federal appointment and the power to release the secretary to Congress, whereas the rest of the organic acts (including Kansas-Nebraska) gave that power to the president. In addition, the Kansas-Nebraska Act changes the term for the secretary from four to five years. In essence, the principles remained the same, with the major responsibility of the secretary to "record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the Acts and proceedings of the Governor in his executive department," and then to transmit those reports to various individuals in the federal government.[10] This clause, taken from the 1854 act, is identical to the 1850 New Mexico Territory and Utah Territory acts and nearly identical to the three other noteworthy organic acts previously discussed.[11] Furthermore, the secretary's duty to "execute and perform all the powers and duties of the Governor" in case of death or absence as enumerated in the Kansas-Nebraska Act is with but one exception found in all the previous organic acts.[12] The territorial secretary filled a largely administrative role, but stood next in line for gubernatorial control over the territory. Hence the filling of this office was met with all the political maneuvering and intrigue

brought to its counterpart, the governorship, and like the governor the secretary was subject to federal appointment.

As already implied by the congressional or presidential power to appoint and remove governors and secretaries from office, these territorial officials were kept on a relatively short leash. The exact wording used in the 1787 Northwest Ordinance of "unless sooner revoked by Congress" and maintained until the 1854 Kansas-Nebraska Act's "unless sooner removed by the President of the United States" served as a constant political and practical reminder of the federal government's ultimate authority in territorial matters.[13] In addition to the governor and secretary, a territory's chief justice, associate justices, U.S. attorney, and U.S. marshal were all under the same federal control of presidential appointment and removal. The power to pass legislation was restricted by the superseding authority of the Constitution of the United States.[14] Other limitations, such as being subject to federal taxes, not interfering with the primary disposal of land by the federal government, and not taxing property of the United States, were also essential provisions in organic acts from 1787 onward.[15]

Federal control over territorial boundaries added to the weight of federal authority within the territories—Kansas and Nebraska included. Subsequent state governments faced similar limitations of power, but not to the extent at the territorial level. Territorial governments had immediate control over local affairs and legislation, but this control was ultimately trumped by either explicit federal authority over matters as defined in the corresponding organic act or by presidential and congressional powers to remove territorial officials from office. The U.S. government was willing to admit new territories into the Union, but only under strict federal supervision. Thus territories basically functioned under a colonial apprenticeship prior to statehood.

Requirements to Vote and Hold Office

Of all the events associated with the Kansas-Nebraska Act, voter fraud and outright violence surrounding the electoral process are perhaps the best known. Despite its unique outcome, the

1854 act closely followed the electoral patterns previously set forth by organic acts whose elections had gone more smoothly. The Northwest Ordinance restricted voter qualifications to "free male inhabitants of full age" who met certain landownership and residency regulations.[16] The Orleans Territory Act of 1804 was even more restrictive, eliminating suffrage altogether and leaving the appointment of the thirteen-member legislative council to the president.[17] Over the next thirty years, suffrage requirements as reestablished in organic acts became progressively less exclusive, and with the Wisconsin Territory Act of 1836 provisions, voter qualifications evolved to serve as the Kansas-Nebraska Act's precedent. Unlike previous acts—the Northwest Ordinance (1787), Orleans Territory Act (1804), Missouri Territory Act (1812), Florida Territory Act (1822), and Michigan Territory Act (1823)—which required combinations of landownership, payment of taxes, or years of previous residence to vote, the 1836 Wisconsin Act opened suffrage to "every free white male citizen of the United States, above the age twenty-one years, who shall have been an inhabitant of said Territory at the time of its organization."[18] This was altered in the Kansas-Nebraska Act to free white male inhabitants who were "actual resident[s] of said Territory."[19] Wisconsin required prior residency, but Kansas did not. As will be shown, it was not the age or racial requirements that caused the election time violence in Kansas but rather this issue of actual sustained residency.

The participation of nonresidents in the Kansas elections was the root cause of most of the violence. If blame for this voter fraud is to be placed on the Kansas-Nebraska Act, then the most intuitive assumption would be that the 1854 act did not detail how to determine residency, a requirement to vote. Oddly, the document is quite explicit in determining the number of residents before the first election. In the footsteps of its Wisconsonian, New Mexican, and Utahan counterparts from 1836 and 1850, Section 4 of the Kansas-Nebraska Act called for the governor to enact a census before the first election.[20] Not only did it require an enumeration of inhabitants to determine the number of territorial representa-

tives as did the Wisconsin Territory Act and the two 1850 acts, but it also specifically called for a numbering of the "qualified voters of the several counties and districts of the Territory." In this way, the Kansas-Nebraska Act was actually more specific and careful than the three previous acts. Therefore, there was no defect or oversight in the 1854 act that made voter fraud easier. In fact, the 1854 act had more safeguards than its predecessors had. It was not the lack of preventative measures within the act that allowed for widespread voter fraud in Kansas; rather, it was the lack of enforcement of provisions that the act did contain.

Just as voting qualifications became progressively more inclusive following the Ordinance of 1787, the requirements to hold office followed a similar evolution. Stipulations established in the Northwest Ordinance allowing a possible representative to serve in the lower legislative chamber were much more restrictive than the requirements to vote: "*Provided* that no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years and be a resident in the district or unless he shall have resided in the district three years and in either case shall likewise hold in his own right in fee simple two hundred acres of land within the same."[21] Prospective legislators had to own two hundred acres of land in the respective district and have been either U.S. citizens or residents of the district for three years. The qualifications for holding other offices in the Northwest Territory Assembly and Council were even higher.[22] About two decades later, with passage of the Orleans Territory Act, a presidentially appointed territorial legislature was required to have resided for at least one year in the territory, own real estate, and not have previously held a paid territorial position.[23] Over the next fifty years, territorial organic acts saw the dropping of both the landownership and previous residency requirements as eligibility for all offices in territorial governments. Following this evolution, the Kansas-Nebraska Act allowed for all white male residents of the territory who were at least twenty-one years old and either were, or swore an oath to become, a U.S. citizen to be elected to "any office within the said Territory."[24]

Political opportunity had increased from including a few select wealthy landowners in 1787 to a much broader, though not yet all-inclusive, demographic in 1854.

Indian Affairs and Territories

Another section of the Kansas-Nebraska Act that can be tied directly to previous organic acts is its treatment of Indian affairs. Patterned almost word for word after the 1836 Wisconsin Territory Act, section 1 of the Kansas-Nebraska Act presents three primary principles concerning Indian relations:

> *Provided further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory be expected out of boundaries, and constitute no part of the Territory of Nebraska, until said tribe shall signify their assent to the President of the United States to be included within the said Territory of Nebraska, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed.[25]

First, Indians retain their rights of person and property as long as they are protected by treaty with the United States. It is implied, however, that these rights are temporary and may be altered in the future. A similar contradictory juxtaposition of Indian rights and federal power to revoke those rights was also present in the Northwest Ordinance. It states, "The utmost good faith shall always be observed towards the Indians, their lands and property shall never be taken from them without their consent; and in their property,

rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress."[26] The Kansas-Nebraska Act's simultaneous assertion of Indian rights while making possible future retraction of these same rights was established in more than a century of treaty precedents.

Second, Indian rights, lands, and properties were to be protected, but only as long as desired by the federal government. Indian lands claimed by treaty with the United States would take no part in the new territories of Nebraska and Kansas unless otherwise consented to by the tribe. Indian nations had to approve land deals for fee simple titles to individual land holders to be recognized. And third, the federal government retained its previous authority over and power to interact with Indian tribes. Again, federal authority is asserted in territorial matters through organic acts.[27]

The Issues of Slavery and Popular Sovereignty

Of all the issues addressed in territorial organic acts, the most volatile was that of slavery. How this issue was addressed before 1854 made it all the more explosive in the Kansas-Nebraska Act. Its provision drew significant attention. Clauses and provisos dealing with slavery appeared in the very first territorial organic act in 1787. Article 6 of the Northwest Ordinance stated clearly and without hesitation, "There shall be neither Slavery nor involuntary Servitude in said territory."[28] This explains why the 1836 Wisconsin Territory Act makes absolutely no mention of slavery, since Wisconsin was carved out of the Old Northwest. It was a moot point because the Northwest Ordinance had already decided the issue for that entire geographic region.

Farther south, and outside of the Northwest Ordinance's authority, the situation became more complicated. Section 10 of the Orleans Territory Act included three separate clauses on the question of slavery. First, no slaves could be imported into Orleans Territory from foreign ports. Second, slaves that had been imported to U.S. ports after May 1, 1798, were prohibited from being brought into Orleans Territory. This left open the possibility of bringing slaves into the Territory if they were enslaved and

in the United States before 1798, and this led to the third clause, which confined such importations to American citizens who were the "bona fide owner of such slaves or slaves" and planning to settle.[29] Slavery had not been completely prohibited, but some restrictions had been adopted.

Later, as tensions continued to increase over this issue, a compromise of sorts was tried in the Missouri Territory Act of 1820. Section 8, its last paragraph, reads, "*And be it further enacted*, That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the state, contemplated by this act, slavery and involuntary servitude . . . is hereby, forever prohibited."[30] It is this clause, known as the Missouri Compromise of 1820, that set the stage for the contention surrounding the Kansas-Nebraska Act. If followed, the Missouri Compromise should have acted much like the previously cited Article 6 of the Northwest Ordinance. The Kansas-Nebraska Act need not, like the Wisconsin Act, have made mention of slavery. It was prohibited. Nebraska and Kansas fell north of the Missouri Compromise's 36°30′ line and therefore should have been automatically assumed free. Herein lies the basic controversy and inconsistency inherent within the Kansas-Nebraska Act. Slavery therefore became *the* issue.

The slavery issue as treated in the Kansas-Nebraska Act embodied the doctrine of popular sovereignty. Stephen A. Douglas came to champion this doctrine as he fought for passage of the Kansas-Nebraska Act. It is set forth in the latter half of Section 14 of the act, reading 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."[31] According to this clause, the citizens of Nebraska and Kansas were to be allowed to decide for themselves if their territory would allow slavery or not. Oddly, many looked to the Kansas-Nebraska Act as proof that Douglas's popular sovereignty was a failure. It is a common misconception to refer to the 1854 act as the great experi-

ment in popular sovereignty. In fact, only four years earlier, both New Mexico and Utah had become territories with similar clauses of popular sovereignty in their organic acts. The last proviso in Section 2 of the New Mexico Territory Organic Act of 1850 states, "And provided, further, That, when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission."[32] Identical wording is found also in Section 1 of the Utah Territory Organic Act.[33] They were the first great experiments of popular sovereignty in the territories.

Why then were the outcomes so different in the Great Basin and Southwest in 1850 when compared with Kansas and Nebraska in 1854? Two factors may be crucial. First, both Utah and New Mexico territories were somewhat isolated and unique geopolitically. It was not a simple matter to immigrate to either, and both territories had a cultural past that dictated the quantity and kind of immigration. Mormon settlement in Utah and the original seventeenth-century Spanish settlements in New Mexico meant established political and legal institutions would not be built completely anew. Kansas, adjacent to slave state Missouri, and Nebraska, adjoining free state Iowa, complicated migration to these completely new political creations. The motives behind, mode of, and participants in migration to these regions differed greatly. Finally, it is not insignificant that New Mexico and Utah's organic acts violated no previous geography-specific laws. Both territories were outside the Louisiana Purchase lands and beyond the reach of the Missouri Compromise. The Kansas Nebraska Act, however, rendered the Missouri Compromise moot.

Not only did the Kansas-Nebraska Act run counter to and "violate" the previous law but it acknowledged that violation and explicitly nullified the Compromise. This is detailed in the organic statute directly preceding the popular sovereignty clause in Section 14.

> That the Constitution, and all Laws of the United States which are not locally inapplicable, shall have the same force

> and effect within the said Territory of Nebraska as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March sixth, eighteen hundred and twenty, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void.[34]

The Kansas-Nebraska Act's application of popular sovereignty contradicted the Missouri Compromise's declaration that slavery in those territories was to be "forever prohibited," and it voided the Compromise altogether. Thus the controversy surrounding the Kansas-Nebraska Act was not about the ideology in the doctrine of popular sovereignty itself but rather in its application to territories north of the 36°30′ line. Textually, the Kansas-Nebraska Act's clause of popular sovereignty did not significantly differ from the preceding New Mexico and Utah acts, but its application in Louisiana Purchase lands north of the 36°30′ line proved revolutionary. The additional clause voided previous legislation that had brought a certain degree of stability, if not predictability, to North-South tension.

Conclusion

This discussion of the Kansas-Nebraska Act of 1854 and how it compares with previous territorial organic acts is brief and general in both its approach and application. The actual text of the act contains more topics that have not been addressed, but they are not central to the political dilemma created by the act.[35] Nevertheless, tracing specific territorial trends from 1787 to 1854 reveals some significant comparisons and evolutionary history about the Kansas-Nebraska Act itself.

First, the organic act that created the territories of Kansas and Nebraska followed established patterns of territorial organic acts. Most major changes in territorial organic acts occurred before or during 1850 and were included in the New Mexico Territory and

Utah Territory acts. The Kansas-Nebraska Act introduced little in the way of legal innovation. Second, organic acts by definition created a geopolitical entity that was governed by local authorities but still ultimately subject to the superseding authority of the federal government. The Kansas and Nebraska territories were to be no different. Third, even the Kansas-Nebraska Act's infamous popular sovereignty clause was not necessarily innovative. It was patterned closely after the previous 1850 legislation. Its application, which had such contentious and violent effects, was not that it introduced a new and previously untested law or doctrine but rather that it revoked a significant and pivotal older law—the Missouri Compromise of 1820. Without those few lines in Section 14 that allowed for the application of popular sovereignty in lands previously declared forever free, the Kansas-Nebraska Act might have been passed with little objection and surely no civil disturbance in Kansas. The Kansas-Nebraska Act of 1854, in large part an ordinary document, nevertheless had a catastrophic impact on its nation's history—leading to turmoil, division, and national crisis without precedent.

Notes

1. It is formally titled "An Act to Organize the Territories of Nebraska and Kansas," and it is found in *Statutes at Large* 10 (May 30, 1854): 277–90. The text is in the appendix following chapter 8.
2. See Arthur Bestor, "Constitutionalism and the Settlement of the West: The Attainment of Consensus, 1754–1784," in John Porter Bloom, ed., *The American Territorial System* (Athens: Ohio University Press, 1973), 13–44.
3. These selected themes do not represent all of the topics covered in the Kansas-Nebraska Act or the aforementioned organic acts that will be used in comparison, but they do embody these main ideas and issues.
4. Kansas-Nebraska Act, 277.
5. United States, "An Ordinance for the government of the territory of the United States North West of the river Ohio," *Journals of the Continental Congress, 1774–1789*, 32 (July 13, 1787): 334 (hereinafter referred to as the Northwest Ordinance).
6. United States, "An Act proposing to the State of Texas the Establishment of her Northern and Western Boundaries, the Relinquishment by the said State of all Territory claimed by her exterior to said Boundaries and of all her Claims upon the United States, and to establish a territorial Government for

New Mexico," *Statutes at Large* 9 (September 9, 1850): 447 (hereinafter referred to as the New Mexico Territory Organic Act); and United States, "An Act to Establish a Territorial Government for Utah," *Statutes at Large* 9 (September 9, 1850): 453 (hereinafter referred to as the Utah Territory Organic Act).

7. See Northwest Ordinance, 336, 339. One further stipulation that appears is the requirement for landownership. It calls for the governor to own one thousand acres of land in the district. A similar requirement of five hundred acres is made for the territorial secretary and the territorial supreme court judges. As with like requirements for the holding of legislative offices and suffrage found in this 1787 statute, mandatory landownership is not included in any of the subsequent territorial organic acts. See Northwest Ordinance, 336.
8. United States, "An Act Erecting Louisiana into Two Territories, and Providing for the Temporary Government Thereof," *Statutes at Large* 2 (March 26, 1804): 283 (hereinafter referred to as the Orleans Territory Organic Act).
9. New Mexico Territory Organic Act, 447.
10. Kansas-Nebraska Act, 278.
11. See Northwest Ordinance, 336; Orleans Territory Organic Act, 283–84; and United States, "An Act Establishing the Territorial Government of Wisconsin," *Statutes at Large* 5 (April 20, 1836): 12 (hereinafter referred to as the Wisconsin Territory Organic Act).
12. Kansas-Nebraska Act, 278. The Northwest Ordinance contains no instruction for the transfer of power due to the absence or death of the governor.
13. Northwest Ordinance, 336; Kansas-Nebraska Act, 278.
14. This requirement is not different than at the state level, where state legislation cannot contradict federal law. When coupled with federal control over the appointment and removal of virtually all territorial officials (excepting the legislative assemblies and some officials appointed by the governor), the territorial government had immediate but not ultimate control over politics and law in the territory.
15. See Northwest Ordinance, 341. Similar lists of federal restrictions on territorial power can be found in all subsequent organic acts. The marginal heading usually reads to the effect, "Legislative power of the Territory defined." See also Orleans Territory Organic Act, 284–85; Wisconsin Territory Organic Act, 12; New Mexico Territory Organic Act, 449; Utah Territory Organic Act, 454; and Kansas-Nebraska Act, 279.
16. Northwest Ordinance, 337. The extra requirement included that a man must own fifty acres of land in the respective district and either be a U.S. citizen or have owned the acreage for two years.
17. Orleans Territory Organic Act, 284. It should be noted that the reason for not offering suffrage was because of the complexities in the transition of the New Orleans region going from a civil law heritage (from both Spanish and French colonial institutions) to a common law system. Previously, the

Northwest Ordinance planned for a three-stage progression from district to territory to state for new lands. It was not until the district qualified to become a territory with five thousand free male inhabitants that suffrage was available. The Orleans Territory Organic Act eliminated the preliminary district stage and started by creating a territory. Although the district stage had received ample criticism, it was still viewed as prudent to retain the right of suffrage upon territorial creation as had been done with the district stage. There was a sense that the inhabitants of French and Spanish descent in Orleans Territory were not yet fit for "full representative government." See Jack Ericson Eblen, *The First and Second United States Empires: Governors and Territorial Government, 1784–1912* (Pittsburgh: University of Pittsburgh Press, 1968), 146. For a fuller explanation of these issues, see Eblen, *Empires*, 138–70.

18. Wisconsin Territory Organic Act, 12. The New Mexico Territory Organic Act and the Utah Territory Organic Act used almost the same wording but without the distinction of voters being citizens of the United States. This is due to the fact that many residents in New Mexico were of Mexican or Spanish descent and many residents in Utah were from England and northern Europe. Instead these laws restricted voting to the inhabitants of the territories to accommodate for those "recognized as citizens by the treaty with the republic of Mexico, concluded February second, eighteen hundred and forty-eight." See New Mexico Territory Organic Act, 449; Utah Territory Organic Act, 454; and Eblen, *Empires*, 164–68.
19. Kansas-Nebraska Act, 279.
20. Kansas-Nebraska Act, 278.
21. Northwest Ordinance, 337.
22. To be chosen by a newly elected territorial representative body, nominees for the five-member legislative Council had to be residents of the respective districts and own five hundred acres of land there. See Northwest Ordinance, 338.
23. Orleans Territory Organic Act, 284.
24. Kansas-Nebraska Act, 279.
25. Kansas-Nebraska Act, 277–78.
26. Northwest Ordinance, 340.
27. The Wisconsin Territory Organic Act established that the governor would perform "the duties and receive the emoluments of superintendent of Indian affairs." Wisconsin Territory Organic Act, 11. This duty is retained in both the New Mexico Territory and Utah Territory Organic Acts, but is remitted in the Kansas-Nebraska Act to the federal government which is to have complete authority over Indian affairs.
28. Northwest Ordinance, 343.
29. Orleans Territory Organic Act, 286.
30. United States, "An Act to authorize the people of the Missouri territory to form a constitution and state government, and for the admission of such

state into the Union on an equal footing with the original states, and to prohibit slavery in certain territories," *Statutes at Large* 3 (March 6, 1820): 548.

31. Kansas-Nebraska Act, 283.
32. New Mexico Territory Organic Act, 447.
33. Utah Territory Organic Act, 453.
34. Kansas-Nebraska Act, 282–83.
35. Topics of merit for further examination include the organizational structure and activities of territorial legislative bodies, judicial officials and districts, wages of territorial officials, the relationship between territorial district courts and the U.S. Supreme Court, and other territorial officers, including the U.S. attorney, U.S. marshal, and officials appointed by the governor.

Chapter Four

Stephen A. Douglas and the Kansas-Nebraska Act

JAMES A. RAWLEY

Stephen A. Douglas is perhaps best known as Abraham Lincoln's opponent in the celebrated Lincoln-Douglas debates of 1858 that gave Lincoln a national and favorable name. At the time of the debates, Douglas incurred extreme criticism. The most unfavorable drew a parallel between Douglas's middle name, Arnold, and Benedict Arnold, the traitor of the American Revolution. By the time of the Civil War, Douglas had inspired both strong positive and negative opinions from many Americans.

Not surprisingly, biographers and historians of Douglas have disagreed with one another. Allan Nevins and James Ford Rhodes, perhaps influenced by their admiration for Lincoln, have treated Douglas harshly. On the other hand, A. J. Beveridge favored him, and Gerald Capers subtitled his biography *Defender of the Union.* Douglas's best biographer, Robert Johannsen, offers a balanced judgment.[1]

That Douglas has proved to hold a controversial legacy primarily stems from his role as chief architect of the Kansas-Nebraska Act of 1854. This attempt at political compromise provoked passion and profundity. It elicited significant historic movements and events. Support for Douglas's legislative efforts brought him praise. Georgia senator Robert Toombs said the act afforded "a measure of peace, equality, and fraternity."[2] But Abraham Lincoln,

after a term in Congress and a return to his legal practice, was incensed by the Kansas-Nebraska Act. He offered a public reaction in a speech that promised to place him in national politics for the rest of his life. Of the Kansas-Nebraska Act Lincoln passionately reasoned, "I think, and shall try to show, that it is wrong; wrong in its direct effect, letting slavery into Kansas and Nebraska, and wrong in its prospective principle, allowing it to spread to every other part of the world. . . . This declared indifference, but as I think, covert zeal for the spread of slavery, I cannot but hate."[3]

Stephen Douglas, by his construction of the Kansas-Nebraska Act, unleashed a flurry of national verbiage—of brotherly love and excoriating hatred. The controversy that surrounded the act is his legacy, and as such, it remains a crucial factor in any attempt to understand the importance of the Kansas-Nebraska Act.

The Early Douglas

In an autobiographical sketch, Douglas wrote, "I learned from my mother that I was born in Vermont on the 23rd day of April, 1813."[4] He received more education than was customary among the children of his day, studying Latin, Greek, mathematics, and literature. And to make his mark, like many of his contemporaries, he migrated west, settling in Jacksonville, Illinois, in 1833 at age twenty-one.

Stephen Douglas had an early aptitude for politics. A Democrat, he absorbed the Jeffersonian and Jacksonian outlook of exalting both popular government and states' rights in his initial political views. He became a principal proponent of popular sovereignty in all territorial governments. He argued that a proper democracy transplanted to the frontier should allow actual settlers in a territory to vote on whether their territory was slave or free. This dogma was a departure from earlier national practice, which in 1787 enacted the Northwest Ordinance, prohibiting slavery in the territory north of the Ohio River, and the more recent Missouri Compromise in 1820, which forever prohibited slavery in the Louisiana Purchase lands north of the 36°30′ parallel.

After holding Illinois state offices and moving to Springfield,

Douglas was first elected to the U.S. House of Representatives in 1843 and then selected for the U.S. Senate by the Illinois legislature in 1846. He remained in the Senate until his untimely death in 1861. Douglas retained a commanding presence throughout his lengthy political career.

Harriet Beecher Stowe, famed author of *Uncle Tom's Cabin*, observed Douglas while she was sitting in the Senate Gallery. She wrote, "This Douglas is the very ideal of vitality. Short, broad, and thick-set, every inch of him has its own alertness. He has a good ear and face, thick black hair, heavy black brows and a keen eye. His figure would be an unfortunate one were it not for the animation which constantly pervades it. . . . He has two requisites of a debater—a melodious voice and a clear sharply defined enunciation."[5]

Political Prelude and Creation of the Kansas-Nebraska Act

The simmering policy issue of slavery erupted when the United States went to war with Mexico during Douglas's first year in the Senate. David Wilmot, a Pennsylvania Democrat representative, perceived that the war might lead to the annexation of territory enhancing the South's power. Buttressed by other Northern Democrats, Wilmot introduced a measure to prohibit slavery in any territory acquired from Mexico. It won adoption in the House, but it lost in the Senate. Voted on many subsequent times, it was never adopted. Nonetheless, the Wilmot Proviso debate divided Congress not by party but by region, and it became the core theme of the future Republican Party and a bellwether of future political upheaval.

A crisis occurred in 1850 in which several issues involving slavery threatened the continuance of the Union. In rejecting the substantive concepts of the Wilmot Proviso, John C. Calhoun asserted, "The North must give us equal rights in the acquired territory . . . , and she must consent to an amendment to the Constitution which will restore to the South the power she possessed of protecting herself before the equilibrium between the two sections was destroyed by the action of this government."[6]

Henry Clay, the great "Pacificator," put together a package of measures to harmonize the discord, but he became ill and turned the matter over to Senator Douglas, chairman of the Committee on Territories. Wisely dividing the package into parts, lest one part prompt negative votes for the entire package, he pushed through the measure known as the Compromise of 1850. The language in organizing the territories of Utah and New Mexico read, "That, when admitted as a state, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission."[7] This statutory language proved an early indication of Douglas's fundamental political ideology.

No longer a New Englander, but now a Westerner, Douglas sought territorial expansion. Following failed attempts to extend the Missouri Compromise line, he sponsored a homestead law to populate the area and a bill to construct a railroad that would connect the Mississippi Valley with the newly acquired Pacific Coast. Each would eventually become law in 1862 after his death. Only four years after the Compromise of 1850, Douglas introduced a bill to organize Nebraska Territory. He was influenced by his desire to make feasible a transcontinental railroad, to please Southern Democrats, to open the West to settlement, and to increase the value of his own real estate in Chicago, which he hoped would be the eastern terminus for the railroad. Perhaps Douglas thought such political maneuvering would make him a strong candidate for a presidential nomination.

What began for Douglas as the Nebraska Act was later debated in Congress and recorded in history as the Kansas-Nebraska Act. On January 30, 1854, Douglas described to the Senate the thinking of his committee. "We took the principles established by the Compromise Act of 1850 as our guide, and intended to make each and every provision of the bill accord with those principles." For Douglas, the Missouri Compromise, "having been superseded by the legislation of 1850," was no longer viable. "Hence we propose to leave the question [of slavery] to the people of the States and Territories." The language employed in the act stated that

the ban on slavery in the Missouri Compromise, "being inconsistent with the principle of nonintervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void."[8]

Douglas had curiously forged a repeal of the Missouri Compromise with the implementation of popular sovereignty. The idea of the application of popular sovereignty to Nebraska and Kansas previously had incurred opposition because it could not be employed north of the line set by the Missouri Compromise in Louisiana Purchase lands. That the precedent Douglas cited to counter resistance to his bill, that popular sovereignty had been included in the territorial organic acts of New Mexico and Utah did not apply to Louisiana Purchase lands, failed to deter Douglas. Introduced on January 23 and heatedly debated during the next three months, the Nebraska bill passed the Senate on March 3, 1854, by a vote of 37 to 14, and the House on May 22, with a closer vote of 113–100. A momentous change in slavery policy had occurred. Expansion of slavery with the signature of President Franklin Pierce had been authorized.

Responses to a Political Earthquake

Reaction to the Kansas-Nebraska Act was swift and vocal. Many Northerners believed pressures from the South had brought about repeal of the Missouri Compromise, only a third of a century after its enactment, and that Douglas had facilitated this blatantly sectional political action. Douglas said that he was keenly aware that repeal would cause a major ruckus. Still, he was surprised when his popularity plunged throughout the North. When he endeavored to make a speech in Chicago, his audience hissed and cried out so much that he was compelled to cease speaking.

The measure's threat to Democratic and Whig Party unity, even before the Congress approved it, was made dramatically plain in a pamphlet circulated nationally entitled *Appeal of the Independent Democrats*. It bore the signatures of six prominent political leaders—Salmon P. Chase, Charles Sumner, J. R. Giddings, Edward

Wade, Gerrit Smith, and Alexander DeWitt. It read in part: "We arraign this bill as a gross violation of a sacred pledge; as a criminal betrayal of precious rights; as part and parcel of an atrocious plot to exclude from a vast unoccupied region immigrants from the Old World and free laborers from our own States, and convert it into a dreary region of despotism, inhabited by masters and slaves. . . . We appeal to the people. We warn you that the dearest interests of freedom and the Union are in imminent peril."[9]

Douglas, at first furious that he had been asked to postpone the introduction of his Nebraska bill so the signers of the appeal could reproduce it, replied to the maelstrom in the Senate. He asserted that the senator who had asked him to delay his bill had come to him "with a smiling face and the appearance of friendship." But then that same senator had gone on to say that Douglas had favored extending the Missouri Compromise line to the Pacific Coast. That, Douglas assured the Senate, was not true. Doggedly returning to his flawed argument about the territories of New Mexico and Utah, Douglas intoned, "The leading feature of the Compromise of 1850 was congressional non-intervention as to slavery in the Territories, that the people of the Territories, and of all the States, were to be allowed to do as they pleased upon the subject of slavery, subject only to the provisions of the Constitution of the United States. . . . [S]o far as the question of slavery is concerned, there is nothing in the bill under consideration which does not carry out the principle of the compromise measures of 1850, by leaving the people to do as they please, subject only to the Constitution of the United States."[10]

Christian ministers lost little time using the pulpit to enter politics with surprising zeal. Massachusetts senator Edward Everett, once a clergyman and opposed to slavery, rose in the Senate chamber to present a memorial against passage of the Nebraska bill. "It is signed . . . by three thousand and fifty clergymen in New England," noted Everett. Douglas asked to have the memorial read, and it was: "The undersigned, clergymen of different denominations in New England, hereby, in the name of Almighty God, and in his presence, do solemnly protest against the passage

of what is known as the Nebraska bill, or any repeal or modification of the existing legal prohibitions of slavery in that part of our national domain which it is proposed to organize into the Territories of Nebraska and Kansas. We protest against it as a great moral wrong, as a breach of faith eminently unjust to the moral principles of the community, and subversive of all confidence in national engagements; as a measure full of danger to the peace and even the existence of our beloved Union, and exposing us to the righteous judgments of the Almighty: and your [P]rotestants, as in duty bound, will ever pray." Sensing the clamor of opposition, Douglas curtly replied, "It is evident that these men know not what they are talking about. It is evident that they ought to be rebuked, and required to confine themselves to their vocation."[11]

From his home state, twenty-five Chicago clergymen sent Douglas the proceedings of a meeting they had held. They too protested "in the name of Almighty God . . . against passage of what is known as 'the Nebraska bill' as citizens and as ministers of the Gospel of Jesus Christ." Douglas replied, "Unwilling as I am to believe that you, as the professed ministers of Jesus Christ, assembled in His Holy name, could deliberately put forth a charge so unjust and unfounded, yet I am unable to put any other construction upon your language, or to conceive of any other object you could have had in passing these resolutions." Douglas was more than willing to appear personally and publicly offended: "In vindication of my own character against the aspersions which you have so unjustly cast upon it, you must permit me to say, with the most profound respect for your 'office as ministers,' that if you had read the debate yourselves before you pronounced judgment on it, instead of following the lead of an unscrupulous partisan press, you would have known that the charge in any of its forms, and in all its length and breadth was wickedly and wantonly untrue." These attitudes, Douglas found, were dangerous to the Union. "Your claims for the supremacy of this divinely appointed institution are subversive of the fundamental principles upon which our whole republican system rests. What [is] the necessity of a Congress, if you can supervise and direct its conduct?"[12]

Joining the increasing criticism of Stephen Douglas was Frederick Douglass, the nation's leading African American figure, who lambasted the senator in a speech in Chicago in November 1854. "The proposition to repeal the Missouri Compromise was a stunning one. It fell upon the nation like a bolt from a cloudless sky." Continued Douglass, personalizing his attack, "Now the question is, does the Kansas-Nebraska bill give to the people of these territories the sovereign right to govern themselves? . . . Nothing could be further from the truth. . . . This Nebraska bill gives to the people of the territories the right to hold slaves. Where did this bill get that right? . . . Did it get it from the Hon. Stephen A. Douglas? . . . Had he any such right? The answer is he had not."[13]

Senator Salmon P. Chase of Ohio, author and cosigner of the *Appeal of the Independent Democrats*, gave a long speech to the Senate on February 3, 1854, rejecting the proposed Kansas-Nebraska law. At the opening of Congress, he recalled, "no agitation seemed to disturb the political elements. . . . slavery agitation was at an end. . . . But suddenly all changed. . . . And now we find ourselves in the midst of an agitation the end and issue of which no man can foresee. Now, Sir, who is responsible for this renewal of strife and controversy? . . . It is slavery." Chase continued, "Up to the very close of the last session of Congress nobody had ever thought of a repeal by supersedure. . . . The great majority of the American people, North and South, believe the Missouri prohibition to be constitutional. . . . Senators who were here during the discussions of 1850, must remember that the report of the Committee of Thirteen distinctly stated that the compromise measures applied to the 'newly acquired territory.'"[14]

Senator Everett, known for his intellectual brilliance and oratorical skill, followed Chase on the Senate floor and further attacked Douglas's reasoning and judgment. He swept aside Douglas's claim that the language used about slavery in the Compromise of 1850 would govern all other territories in the future. He asserted that the notion of congressional noninterference with slavery in the territories by definition was absurd. A succession of senators then spoke. Senators William Seward and Charles Sumner argued

against the bill. Senator Lewis Cass of Michigan, nominated by the Democrats for president in 1848, and who favored popular sovereignty, spoke for the Kansas-Nebraska Act.[15]

Throughout the North the political impact of Douglas's deed was substantial. From late 1854 into early 1856, the Whig Party continued to wither. The Know-Nothing Party won many members. Factions, some of which called themselves the Anti Kansas-Nebraska Act Party and then the Republican Party, came into being. Chase claimed half a million copies of the *Appeal of the Independent Democrats* had been circulated.

Abraham Lincoln made a public speech wherein he voiced strong opposition to the Kansas-Nebraska Act. Unlike his usual custom, after he delivered it he went home and wrote it out. Lincoln's text read, "I hate it [the Kansas-Nebraska Act] because of the monstrous injustice of slavery itself. I hate it because it deprives our republican example of its just influence in the world; enables the free institutions with plausibility to taunt us as hypocrites . . . and especially because it forces so many really good men amongst ourselves into an open war with the very fundamental principles of civil liberty, criticizing the Declaration of Independence and insisting there is no right principle of action but self-interest."[16]

In addition to the politicians and preachers who assailed Douglas's Kansas-Nebraska Act, the press in the North did its part. The most influential newspaper was Horace Greeley's *New York Tribune.* Issue after issue struck hard against what Douglas had done. On January 26, 1854, before the measure had passed, the *Tribune* asserted: "If the traitorous men at Washington who are plotting the surrender to slavery of the free territory west of the Mississippi believed that a majority of the North would fail to sustain the movement, they would instantly cease their clamor and skulk back and we should hear no more about it. But they have adopted the belief that the passage of the compromise measures of 1850, and the triumphant election of Frank Pierce [the Democratic president], have taken all the spirit out of the North, and that the mass of the voters are now ready to wink at any party iniquity, and sustain any party measure, whatever its iniquity." The *Tribune*

foresaw the political crisis. "There has been no time during the last seven years when the Whig and Free Soil parties have not been in a clear majority in nearly all the Northern States. . . . Assuming this to be so, the only question to be answered is, whether that sentiment can be aroused and consolidated and brought to bear in solid phalanx against the atrocious proposition in consequence. The fools in Washington believe it cannot. We believe it can." Thus the gauntlet had been thrown down even before the Kansas-Nebraska Act had become law.[17]

Political Aftershock and Douglas

The dogma of popular sovereignty had loomed large in the past six years: in the presidential candidacy of Lewis Cass, the Compromise of 1850, the Kansas-Nebraska Act, and Douglas's post-1854 correspondence. In the 1856 Democratic Party presidential nominating convention, Douglas gained as many as 63 votes on the fifteenth ballot, not enough for the nomination, but a politically noticeable presence. James Buchanan won the nomination, and the party platform endorsed popular sovereignty. The plank read, "The American Democracy recognize and adopt the principles contained in the organic laws establishing the Territories of Kansas and Nebraska as embodying the only sound and safe solution of the 'slavery question' upon which the great national idea of the people of this whole country can repose in its determined conservatism of the Union—NON-INTERFERENCE BY CONGRESS WITH SLAVERY IN STATE AND TERRITORY, OR IN THE DISTRICT OF COLUMBIA."[18]

A pleased Douglas wrote an Illinois colleague, "I have just read so much of the Platform as relates to the Nebraska bill and slavery question. The adoption of that noble resolution by the unanymous [sic] vote of all the States accomplishes all the objects I had in view in permitting my name to be used before the convention." Douglas, assured of his party's commitment to popular sovereignty, wanted to do all that he could to achieve party unity in the presidential election: "If agreeable to my friends I would much prefer exerting all my energies to elect a tried Statesman on that

platform to being the nominee myself. At all events do not let my name be used in such a manner as to disturb the harmony of the party or endanger the success so nobly begun."[19] Thus victory by James Buchanan, Douglas and others reasoned, would mean the ratification of popular sovereignty.

But before the 1856 presidential election, lawlessness, fraud, and violence flared in Kansas Territory. A proslavery territorial legislature was "elected" at a meeting scheduled by the governor with the fraudulent participation of numerous Missourians. This action had been a clear violation of Douglas's own dogma of popular sovereignty because nonresident voters had participated in the election. The legislature then adopted Missouri's laws and recognized slavery. Months later an antislavery legislature was elected, and it drew up a Free State constitution, known as the Topeka Constitution. Protests and violence then accelerated.

On January 24, 1856, President Franklin Pierce, concerned about Kansas, sent Congress a special message, blaming outsiders—New Englanders and Missourians—for the Kansas turbulence. He endorsed the present territorial government and repudiated the self-constituted Topeka government. On March 3, 1856, Douglas ushered in a bill to enable Kansas to elect a constitutional convention and to organize a state government.[20]

He soon delivered a lengthy report from his Committee on Territories. It regurgitated much of what President Pierce had said, including denouncing the Topeka movement. When the Topeka "spurious legislature," as Douglas branded it, petitioned Congress to be admitted to the Union as a free state, the document was found to have all of the signatures in the same handwriting. Douglas declared the petition fraudulent, and he sought to put popular sovereignty on a constitutional basis by encouraging Congress to admit Kansas Territory as the new state of Kansas. Congress drew on its constitutional authority to admit new states. States were equal, and Congress could not impair that equality, Douglas reasoned.[21]

Stephen A. Douglas opened debate on the Kansas statehood bill on March 20, 1856. Lyman Trumbull, an Illinois Democrat

befriended by Lincoln, declared there were differences between Southerners and Northerners in interpreting popular sovereignty. Douglas responded in personal terms, sharply censoring Trumbull for criticizing him while he was not present in the Senate chamber.[22] Not only would natural evolution of the Kansas-Nebraska Act into Kansas statehood fracture political parties, but it would also divide senators from the same party and the same state.

Douglas and the Kansas Constitutional Debacle

A convention to make a constitution for Kansas proved badly flawed. Naming delegates had been done using a defective census putting control in the hands of the proslavery faction. Free State people refused to take part in electing delegates. The actual delegates made a provision ensuring that the document would not be put to a fair vote. The article concerning slavery was presented to voters in language which guaranteed voter adoption of the entire Lecompton Constitution with its slavery provision. Douglas could not abide by what he considered to be a blatantly fraudulent exercise of democracy.

Hearing that President Buchanan sanctioned the proslavery Kansas constitution, Douglas went to see him. Confirming that Buchanan approved of the Lecompton Constitution, Douglas informed the president that he would oppose him. Stirred by the opposition of a leading member of his own party, Buchanan rose and warned, "Mr. Douglas, I desire you to remember that no Democrat ever yet differed from an administration of his own choice without being crushed. Beware of the fate of Tallmadge and Rives." Buchanan was alluding to two politicians who had presumably differed with President Andrew Jackson. Douglas retorted, "Mr. President, I wish you to remember that General Jackson is dead."[23] Their relationship deteriorated. In another encounter, Buchanan asked Douglas, "Mr. Senator, do you clearly apprehend the goal to which you are now tending?" Undaunted by Buchanan's threat, Douglas shot back, "Yes, sir, I have taken a through ticket, and checked all my baggage."[24]

On December 8, 1857, Buchanan sent his first State of the Union address to Congress. He praised the "great principle of popular sovereignty" and implied that Kansas was following it. Actually, he approved of the Lecompton Constitution. When the clerk's reading of the message had been completed, Douglas sprang to his feet, asserting that he agreed with most of it, "but in regard to one topic—that of Kansas—I totally dissent from all that portion of the message which may fairly be construed as approving of the proceedings of the Lecompton convention."[25]

The next day Douglas made a major speech to the Senate, lasting three hours. In the course of it he said, "Ignore Lecompton, ignore Topeka; treat both of the party movements as irregular and void; pass a fair bill—the one that we framed ourselves when we were acting as a unit; have a fair election—and you will have in the Democratic party, and throughout the country, peace in ninety days. The people want a fair vote. . . . They never shall be satisfied without it."

Douglas continued, "Frame any other bill that secures a fair, honest vote, to men of all parties and carries out the pledge that the people shall be left free to decide on their own domestic institutions for themselves, and I will go with you with pleasure, and with all the energy I may possess. But if this Constitution is to be forced down our throats, in violation of the fundamental principle of free government . . . , I will resist it to the last." Douglas knew he risked political annihilation. "I have no fear of any party associations being severed. I should regret any social or political estrangement, even temporarily; but if it must be, if I cannot act with you and preserve my honor, I will stand on the great principle of popular sovereignty, which declares the right of all people to be left perfectly free to form and regulate their domestic institutions in their own way. I will follow that principle wherever its logical consequences may take me, and I will endeavor to defend it against assault from any and all quarters. No mortal man shall be responsible for my action but myself."[26]

Douglas worried that Kansans, with the tacit acknowledgment of President Buchanan, planned to implement their pro-slavery

constitution before congressional approval. On February 6, 1858, an outraged Douglas wrote John W. Forney, editor of the *Philadelphia Press*, "The idea that the Lecompton convention, clothed with no other authority than that which it derived from the Territorial Legislature, could ordain a constitution and put it in force without the consent of Congress, and in defiance and subversion of the authority of the Territorial Legislature established by Congress, is too preposterous to admit of argument."[27]

The Committee on Territories next submitted its report to the Senate favoring Kansas statehood as a slave state. Douglas, in the minority, had his report published separately. It began, "I am constrained to withhold my assent from the conclusion to which the majority of the committee have arrived for the reason, among other things, that there is no satisfactory evidence that the constitution formed at Lecompton is the act and deed of the people of Kansas, or that it embodies their will."[28] On March 22, Douglas took to the floor of the Senate chamber and in a stirring speech reaffirmed much of what he had authored in the minority report. The recent election in Kansas proved the Lecompton Constitution did not embody the popular will, he concluded. It was a "void, rejected, repudiated constitution." It violated the "fundamental principles of free government."[29]

The Senate approved the Lecompton Constitution, and the House tied to it a requirement that the document be returned to Kansas for a vote of the people. Anti-Lecompton sentiment being strong in the two chambers led to a compromise with a land grant offered to Kansas in return for a required vote of the people on a constitution for admission to statehood. Douglas anxiously struggled with his decision on how to vote. He eventually told some of his colleagues he could support the bill, astounding anti-Lecompton congressmen. Finally, his beloved principle of popular sovereignty prevailed. He informed the Senate, "I could now bring my judgment or conscience to the conclusion that this was a fair, impartial, and equal application of the principle."[30]

In the summer and autumn of 1858, Douglas and Lincoln, each an aspirant for the office of United States senator, engaged

in a series of debates. The debates were characterized by "interrogatories," questions posed to each candidate by the other candidate. Mindful of *Dred Scott v. Sandford*, 60 U.S. 393 (1857), in which the U.S. Supreme Court had ruled that Congress could not prohibit slaves, being property, from entering the territories, Lincoln asked Douglas in the second debate, "Can the people of a United States Territory, in any lawful way, against the wish of any citizen of the United States, exclude slavery from its limits prior to the formation of a State constitution?"

Remarking that Lincoln knew he had answered the question many times, Douglas asserted, "The people have the lawful means to introduce it or exclude it as they please, for the reason that slavery cannot exist a day or an hour anywhere, unless it is supported by local police regulations. These police regulations can only be established by the local legislature[;] and if the people are opposed to slavery, they will elect representatives to that body who will by unfriendly legislation effectually prevent the introduction of it." What Douglas said became known as the Freeport Doctrine, named for the city in Illinois where that debate took place.[31]

The Freeport speech had national ramifications. Douglas lost influence in the Senate. In a letter to the editors of the *San Francisco National*, Douglas said, "The country is now informed for the first time that I was removed from the post of Chairman of the Committee on Territories because of the sentiments contained in my 'Freeport speech.'"[32]

Dred Scott, Slavery in the Territories, and More National Politics

On March 4, 1857, James Buchanan took the oath of office and gave his first inaugural address. He praised popular sovereignty, "a principle as ancient as free government itself." He observed that persons disagreed when popular sovereignty could be exercised in a territory, early in the territory's life or, as Douglas believed, when there were enough settlers to organize a state government.[33]

A case involving an African American named Dred Scott, a slave who claimed residence in a free territory after residing in

Missouri, had been inching its way through the federal courts for years. Buchanan announced in his inaugural address that *Dred Scott v. Sandford* would very soon be settled by the U.S. Supreme Court. The president had breeched the tradition of the separation of powers in the U.S. Constitution by conversing with Chief Justice Roger Taney about the case.

The Supreme Court ruled that "the right of property in a slave is distinctly and expressly affirmed in the Constitution. . . . [I]t is the opinion of the court that the Act of Congress which prohibited a citizen from holding and owning of this kind in the territory of the United States now of the line [36°30′] is not warranted by the Constitution and is therefore void." It was only the second time a federal law had ever been ruled unconstitutional, the first being in *Marbury v. Madison*, over a half-century earlier.[34]

What of Douglas's popular sovereignty? The *Dred Scott* decision had sustained it, but settlers with slaves in a territory needed proper police protection. In February 1859, Douglas received a letter about the efforts of Southerners to secure federal protection of slavery in the territories. Douglas replied: "We must meet the issue boldly . . . and maintain with firmness a strict adherence to the doctrine of popular sovereignty and non-intervention by Congress with slavery in the territories as well as in the states." Douglas foresaw a threat to his political party from this issue. "There is no other salvation for the Democratic party. I do not intend to make peace with my enemies, nor to make a concession of one iota of principle, believing that I am right in the position I have taken, and that neither can the Union be preserved or the Democratic [P]arty maintained on any other basis."[35]

On June 22, Douglas wrote a letter which he then circulated around the country. He said he could be a candidate for the Democratic Party's presidential nomination. In response to an inquiry from several editors, Douglas implied he was ready to carry the Kansas-Nebraska Act mantle. He was swimming upstream against the political currents.[36]

Many Southerners as well as Northerners repudiated Douglas's favorite political principle, popular sovereignty, with its capac-

ity to outlaw slavery and its potential to extend it. Both Jefferson Davis and Abraham Lincoln rejected it. Realizing a certain defensiveness, Douglas began to ponder writing an article showing that the doctrine reached back to the American Revolution. He believed popular sovereignty was founded in local government, and slavery was then an internal concern. It had, he said, a constitutional basis. *Harper's Magazine* published Douglas's essay in September 1859 under the title, "The Dividing Line between Federal and Local Authority: Popular Sovereignty in the Territories." In the article, Douglas pointed out that the Republican Platform of 1856 declared that the Constitution confers upon congress sovereign power over the territories. He argued that "Congress may . . . confer upon the legislative department of the Territory certain powers which it cannot itself exercise, and only such as Congress cannot exercise under the Constitution." Douglas believed that the actual dividing line, between federal and local authority, was understood by the Constitution's framers.

The article had a mixed reception. The editor of the *New York Times* stated that popular sovereignty was a fair compromise between rival outlooks. But Secretary of War John B. Floyd, a Virginian and once a slave owner, remarked of Douglas that this "last exposition of squatter sovereignty will finally extinguish him."[37]

The Fateful Conventions

As the campaign of 1860 commenced, Douglas, who sought the Democratic nomination, could depend on support only from the northwestern states. Support in the Deep South was quite unsure. Senator Jefferson Davis of Mississippi introduced resolutions for the Democratic platform advocating a national slave code, attacking Douglas's Freeport Doctrine, and stating that the federal government must protect slavery in the territories. These resolutions in effect extinguished popular sovereignty by establishing federal powers to regulate territorial slavery.

Douglas struck back, saying "I am not seeking a nomination. I am willing to take one provided I can assume it on principles that I believe to be sound; but in the event of your making a plat-

form that I could not conscientiously execute in good faith if I was elected, I will not stand on it. . . . I have no abandonment of position or principle; no recantation to make to any man or body of men on earth."[38]

The Democratic Party chose Charleston, South Carolina, as its convention site. It was perhaps the most proslavery city in the United States. Douglas forces had unsuccessfully sought to change the location. When the Democrats met, they were a divided group. Douglas and his followers stood for popular sovereignty; that is, settlers in a territory could decide whether there would be slavery or freedom. Followers of Jefferson Davis, an influential statesman among delegates from the Deep South, turned away from Douglas's popular sovereignty as articulated in his Freeport Doctrine. Incorporated into the party platform in 1856, popular sovereignty proved unacceptable to many in the Deep South in 1860.[39]

A troubled convention loomed ahead. Prior to its commencement, Senator Albert Gallatin Brown of Mississippi, who had opposed the Wilmot Proviso and would soon serve in the Confederate Senate, on January 18, 1860, introduced resolutions in the Senate that required Congress or territorial legislatures to pass laws to protect slave property. Jefferson Davis, on February 2, then introduced a series of resolutions calling for a national slave code, rejecting popular sovereignty, and mandating that the federal government protect property in slaves, which among other matters denied either Congress or the territorial legislatures the power to impair the right of a person to hold slaves in a territory. Congress, Davis believed, must intervene to protect slave property, if necessary. At the Charleston Convention, Brown and Davis played important roles, and Senator John Slidell of Louisiana who supported Davis's slave code legislation and later became a Confederate diplomat, served as President Buchanan's personal representative at the convention.

The convention opened on April 23, Douglas's birthday. When the time came to hear the party's platform, it turned out that there was a majority platform followed by a minority one. The

first denied popular sovereignty, Douglas's favorite principle. The second, which came from Douglas delegates, endorsed popular sovereignty and added that questions of slavery in a territory could be referred to the judiciary. William Lowndes Yancey of Alabama rose to speak. In a diatribe lasting one and a half hours, Yancey attacked Douglas and popular sovereignty, gaining much applause from Southerners. On behalf of Douglas, Senator George E. Pugh of Ohio refused to give up popular sovereignty. He snorted, "Gentlemen of the South—you mistake us—we will not do it."[40]

Balloting began, with a two-thirds majority of the full convention required to nominate. No candidate could be nominated at Charleston, and eight states withdrew from the convention. Another meeting was set to be held in Baltimore on June 18. There once again some delegates withdrew, and on June 23 in the same month, Douglas was nominated. These delegates approved Douglas's ideological standard, that popular sovereignty began when a territory had sufficient population to become a state. Then it ought to be admitted, they believed, as a state, "whether its Constitution prohibits or recognizes the institution of slavery."[41] His opponents had a separate meeting where they stated that the federal government had the duty to protect slave property in the territories. They nominated Senator John Breckinridge from Kentucky and chose a territorial governor, Joe Lane of Oregon Territory, for their vice president.

The Democrats now had two official factions, one characterized by Douglas's popular sovereignty relying on the Supreme Court to decide disputes over the extent of the powers of a territorial legislature and on the powers and duties of Congress over slavery in the territories; the other requiring federal aid, if needed, to enforce slavery in the territories. The Republican Platform read in part that, "The normal condition of all the territory of the United States is that of freedom . . . and we deny the authority of Congress, of the territorial legislature, or of any individuals, to give legal existence to Slavery in any Territory of the United States."[42] Convening in Chicago, they nominated Abraham Lincoln, who had repudiated Douglas's popular sovereignty doctrine.

The Constitutional Union Party, a survivor of the former Whig Party, declared it had "no political principle other than THE CONSTITUTION OF THE COUNTRY, THE UNION OF THE STATES, THE ENFORCEMENT OF THE LAWS." In May the party nominated John Bell of Tennessee. A longtime politician, once a Democrat and then a Whig, he opposed the Kansas-Nebraska Act and the Lecompton Constitution.[43] Thus the political disintegration of the traditional two-party system was complete. Four candidates competed for the presidency, and the Republican candidate prevailed.

Douglas and President Lincoln

During the campaign, Douglas broke custom and traveled and spoke in many parts of the country, particularly in the South and New England. In Norfolk, Virginia, an editor asked him whether the South would be justified in seceding if Lincoln should win the presidency. Douglas responded: "The election of a man to the Presidency by the American people in conformity with the Constitution of the United States would not justify an attempt at dissolving this glorious confederacy."[44] When the election votes were counted, Lincoln won the popular vote with 1,865,593 votes; Douglas came in second acquiring 1,382,713 votes; Breckinridge had 848,356 votes, and Bell in fourth obtained 592,906 votes. The electoral vote split differently: Lincoln with 180, a clear winner; Douglas with only 12; Breckinridge with 72; and Bell with 39. Douglas, carrying only Missouri and a portion of New Jersey, lost even his home state of Illinois to its other native son.

While Congress made efforts to find a new compromise, Lincoln wrote to William Kellogg, an Illinois member of the U.S. House of Representatives, on December 11, 1860. "Entertain no proposition for a compromise in regard to the *extension* of slavery," warned the president-elect. "The instant you do, they have us under again, all our labor is lost, and sooner or later must be done over. Douglas is sure to be again trying to bring in his 'Pop. Sov.'"[45]

While Lincoln seemed to be still fighting the election, Douglas became his defender. On a postelection speaking tour, Douglas

portrayed a closer relationship between them. It went well beyond the oft-cited fact that while Lincoln was delivering his inaugural address, Douglas held his hat. Douglas left no doubt about his zealousness to save the Union in the face of Southern secessionist rumblings. To the Senate, Douglas said, "I trust . . . we may lay aside all party grievances, party feuds, partisan jealousies, and look to our country, and not to our party, in the consequences of our action."[46]

Douglas was saddened by the failure to win passage of the Crittenden Compromise, a last-minute effort by Kentucky's other senator to find a way to bring back to the Union the initial Southern states who had by now seceded. Although this latest compromise attempt had not won Lincoln's support, when Douglas heard a man assert that Lincoln was apparently weak, Douglas defended the president. "He is not that, Sir; but he is eminently a man of the atmosphere which surrounds him. He has not yet got out of Springfield. Sir, . . . he does not see that the shadow he casts is bigger now than it was last year. It will not take him long to find it out when he has got established in the White House."[47]

The night Lincoln arrived in Washington and stayed in Willard's Hotel, Douglas paid him a call. They talked for half an hour. Douglas assured his former opponent that he and his friends would support the Union, "with all of our strength and energy. . . . I am with you, Mr. President, and God bless you." As the interview closed, Lincoln said, "God bless you, Douglas. . . . The danger is great, but with such words and friends why should we fear? Our Union cannot be destroyed."[48]

Douglas saw Lincoln frequently during the next several days. On February 23, 1860, in the late afternoon, Douglas headed an Illinois delegation to see Lincoln. Three days later, Douglas, Governor Thomas H. Hicks, and other Illinois leaders recommended to Lincoln that he exercise his influence to settle the pending difficulties. On the February 27, Douglas saw the president again, staying late to make what was called "an impassioned plea" to bring the South back into the Union. He unsuccessfully recommended the "instant calling of a national convention."[49]

On March 3, Lincoln read to Douglas portions of the inaugural address he would give the next day. He was pleased to hear Lincoln's refusal to accept the validity of secession and at the same time his lack of intention to invade or use force. When Lincoln finished reading his speech, Douglas hastened to congratulate him. Later Douglas told a friend he intended to support Lincoln. Unlike many Southern Democrats, he regarded the address as a peace measure. When North Carolina senator Thomas Clingman charged that the inaugural address was "a preachment which must lead to war," Douglas retorted, "It is a peace offering rather than a war message."[50] Douglas even escorted Mrs. Lincoln to the inaugural ball.

Douglas did what he could to aid Lincoln. War, however, came when the Confederates fired on Fort Sumter in April 1861. Prompted by a congressional colleague, who said to him, "Go at once to the President . . . and tender him all the aid you can give," Douglas vacillated. Uncertain about interceding, but encouraged by his wife, Adele, who had welcomed Mrs. Lincoln to Washington, Douglas did go. Lincoln welcomed him and showed him a draft of a proclamation calling up 75,000 men for military duty. "Seventy-five thousand men will not be sufficient," said Douglas. "I would make it two hundred thousand." They talked for two hours.

That night Douglas wrote a statement that the Associated Press published widely. It read: "Mr. Douglas called on the President, and had an interesting conversation on the present condition of the country. . . . The substance of the conversation was that, while Mr. Douglas was unalterably opposed to the Administration on all its political issues, he was prepared to sustain the President in the exercise of all his constitutional functions to preserve the Union." Asked by the journalist John W. Forney what path to follow, Douglas responded, "There can be but two parties, the party of patriots and the party of traitors. We belong to the first."[51]

Conclusion

Urged to come to Springfield when the legislature convened in the late spring of 1861, Stephen Douglas went to the White House

and said what turned out to be his final farewell to Lincoln. Upon arriving in the Illinois capital, he called for unity within the state, putting aside partisanship and regionalism, and recognition of American nationalism. On April 29, he wrote to Lincoln, "I found the state of feeling here and in some parts of our State [is] much less satisfactory than I could have desired or expected when I arrived. There will be no outbreak however and in a few days I hope for entire unanimity in the support of the government and the Union."[52]

His arduous activities, however, soon debilitated Douglas and sent him to bed with a fever. On June 3, 1861, Stephen A. Douglas, the "Little Giant," died. He had had an acute attack of rheumatism followed by a fatal illness. Lincoln ordered that government offices be closed on the day of the funeral and that the White House and federal buildings be draped in mourning for a month.

On November 27, 1861, Abraham Lincoln wrote a memorandum: "Yesterday Mrs. Douglas called, saying she is guardian of the minor children of her late husband; that she is being urged against her inclination, to send them South, on the pleas of avoiding the confiscation of their property there, and asking my counsel in the case." Lincoln willingly advised her, "I expect the United States will overcome the attempt to confiscate property, because of loyalty to the government; but if not, I still do not expect the property of absent minor children will be confiscated. I therefore think Mrs. Douglas may safely act her pleasure in the premises." Lincoln also noted his own role could complicate matters for the Douglas family. "But it is especially dangerous for my name to be connected with the matter; for nothing would more certainly excite the secessionists to do the worst they can against the children."[53]

Stephen A. Douglas had been an effective politician, leader of his party, a pioneer in seeking a homestead law and a railroad to the Pacific. And though a proponent of popular sovereignty in the territories, he was a committed Unionist. Unfortunately, his adherence to the doctrine of popular sovereignty, which he

embedded in the Kansas-Nebraska Act, separated Deep South Democrats from the Democratic Party, who demanded federal protection of slaves, and this resulted eventually in the Civil War.

Notes

1. See Allan Nevins, *The Emergence of Lincoln* (New York: Scribner, 1950); James Ford Rhodes, *History of the United States from the Compromise of 1850*, 6 vols. (New York: Macmillan, 1904–19); Albert J. Beveridge, *Abraham Lincoln, 1809–1858* (Boston: Houghton Mifflin, 1928); Gerald Capers, *Stephen A. Douglas: Defender of the Union*, ed. Oscar Handlin (Boston: Little, Brown, 1959); Robert Johannsen, *Stephen A. Douglas* (New York: Oxford University Press, 1973).
2. *Congressional Globe*, 33rd Cong., 1st sess. (1854), 458 (hereinafter cited as *Globe*).
3. Roy P. Basler, ed., *The Collected Works of Abraham Lincoln*, 9 vols. (New Brunswick NJ: Rutgers University Press, 1953–56), 2:253–56.
4. Robert W. Johannsen, ed., *Letters of Stephen A. Douglas* (Urbana: University of Illinois Press, 1961), 57.
5. Harriet Beecher Stowe, "Pen Portrait of Douglas," reprinted in Allen Johnson, *Stephen A. Douglas: A Study in American Politics* (New York: Macmillan, 1908), 295–96. See also Clyde N. Wilson and Shirley B. Cook, eds., *The Papers of John C. Calhoun, 1849-50, with supplement*, 27 vols. (Columbia: University of South Carolina Press, 2002), 27:190–211.
6. Wilson and Cook, *Papers of John C. Calhoun*, 27:210. See also Henry Steele Commager, ed., "The Compromise of 1850," *Documents of American History*, 8th ed. (New York: Appleton-Century-Crofts, 1968), 319–23; and Robert R. Russell, "What Was the Compromise of 1850?" *Journal of Southern History* 22 (August 1956): 292–309.
7. "The Texas and New Mexico Act," *Documents*, 8th ed., 1:320–21. The same language is used in the Utah Act. See also *Statutes at Large* 9 (September 9, 1850): 446–61; Robert R. Russell, "The Issues in the Congressional Struggle over the Kansas-Nebraska Bill, 1854," *Journal of Southern History* 29 (May 1963): 186-210; and *Globe*, 33rd Cong., 1st sess. (1854), 275.
8. "The Kansas-Nebraska Act," *Documents*, 8th ed., 1:332; *Globe*, 33rd Cong., 1st sess. (1854), 264.
9. "Appeal of the Independent Democrats," *Documents*, 8th ed., 1:329, 331. See also *Globe*, 33rd Cong., 1st sess. (1854), 275–80.
10. *Globe*, 33rd Cong., 1st sess. (1854), 277–78.
11. *Globe*, 33rd Cong., 1st sess. (1854), 617–18.
12. Johannsen, *Letters of Douglas*, 300–321.
13. Philip Foner, ed., *The Life and Writings of Frederick Douglass*, 5 vols. (New York: International Publishers, 1950), 2:324, 330–32, and generally 316–32.
14. *Globe*, 33rd Cong., 1st sess. (1854), 133–35.

15. *Globe*, 33rd Cong., 1st sess. (1854), 150–55, 158–63.
16. *Collected Works*, 2:253–56.
17. Quoted in Allan Nevins, ed., *American Press Opinion, Washington to Coolidge: A Documentary Record of Editorial Leadership and Criticism, 1785–1927* (Boston: D. C. Heath, 1928), 191.
18. Arthur M. Schlesinger Jr., *History of U.S. Political Parties,* 4 vols. (New York: Chelsea House, 1971), 1:559-90; Horace Greeley and John F. Cleveland, comp., *A Political Text-Book for 1860* (New York: Tribune Association, 1860), 24–35.
19. Johannsen, *Letters of Douglas*, 362.
20. Johannsen, *Douglas,* 401-34, esp. 428–32.
21. *Globe*, 34th Cong., 1st sess. (1856), 663–93.
22. *Globe*, 34th Cong., 1st sess. (1856), 693–95, appendix 280–89.
23. Johnson, *Douglas*, 328.
24. Johannsen, *Douglas*, 588; James D. Richardson, ed., *Messages and Papers of the Presidents, 1789–1908*, 11 vols. (Washington DC: Bureau of National Literature and Art, 1980), 5:449–54.
25. *Globe*, 35th Cong., 1st sess. (1857), 5.
26. *Globe*, 35th Cong., 1st sess. (1857), 18.
27. Johannsen, *Letters of Douglas*, 408.
28. M. W. Cluskey, ed., *The Political Text-Book, or Encyclopedia: Containing Everything Necessary for the Reference of the Politicians and Statesmen of the United States*, 14th ed. (Philadelphia: J. B. Smith, 1860), 429.
29. *Globe*, 35th Cong., 1st sess. (1858), appendix, 194–200.
30. *Globe*, 35th Cong., 1st sess. (1858), 1870.
31. Johannsen, *Douglas*, 760.
32. Johannsen, *Letters of Douglas*, 455.
33. *Messages and Papers of the Presidents*, 5:432.
34. *Marbury v. Madison*, 5 U.S. 137 (1803).
35. Robert W. Johannsen, *The Frontier, the Union, and Stephen A. Douglas* (Urbana: University of Illinois Press, 1989), 122.
36. For the chronicling of the events at the convention on June 22 and the context of Douglas's thinking, see William B. Hesseltine, ed., *Three against Lincoln: Murat Halstead Reports on the Caucuses of 1860* (Baton Rouge: Louisiana State University Press, 1960), 223–40.
37. Johannsen, *Douglas,* 710.
38. *Globe,* 36th Cong., 1st sess. (1860), 559.
39. Johannsen, *Douglas,* 749–59.
40. Charles Carleton Coffin, *Abraham Lincoln* (New York: Harper, 1893), 184.
41. Kirk H. Porter and Donald Bruce Johnson, comp., "The Democratic Platform of 1860," in *National Party Platforms, 1840–1956* (Urbana: University of Illinois Press, 1956), 31.
42. Joseph H. Barrett, *Life of Abraham Lincoln (of Illinois) with a Condensed View of His Most Important Speeches* (Cincinnati: Moore, Wilstach, Keys, 1860), 217.

43. Arthur M. Schlesinger Jr., ed., *History of American Presidential Elections, 1789–1968,* 4 vols. (New York: Chelsea House, 1971), 2:1127. For a general overview of the four candidates in the 1860 presidential election, see 2:1097–1122.
44. Douglas statement to the press, quoted in George Fort Milton, *The Eve of Conflict: Stephen A. Douglas and the Needless War* (1934; reprint, New York: Octagon Books, 1968), 492.
45. *Collected Works,* 4:150.
46. Johnson, *Douglas,* 445.
47. Johnson, *Douglas,* 461.
48. Milton, *Eve of Conflict,* 545.
49. Earl Schenck Miers, ed., *Lincoln Day by Day: A Chronology,* 3 vols. (Washington DC: 1960), 3:21–23; Milton, *Eve of Conflict,* 546.
50. Milton, *Eve of Conflict,* 550.
51. Milton, *Eve of Conflict,* 559, 560.
52. Johannsen, *Letters of Douglas,* 511.
53. *Collected Works,* 5:32.

Chapter Five

Lincoln's Firebell

The Kansas-Nebraska Act

PHILLIP S. PALUDAN

On October 16, 1854, the citizens of Peoria, Illinois, and the surrounding countryside indulged themselves in one of their favorite activities: approximately seven hours of political oratory from two very well known speakers. Stephen Douglas began in the midafternoon and spoke for three hours defending his most recent creation, the Kansas-Nebraska Act. Abraham Lincoln was in the audience because Douglas had agreed that Lincoln should have a chance to reply. But as the hours ticked off, Lincoln worried that he might not have his full say on the subject. So, when Douglas finished, Lincoln stood up and told the crowd that he wanted about the same amount of time, but as it was close to the dinner hour he suggested that they go home for supper and then come back and listen to him speak. As an inducement to the people, especially Democrats, he also promised that Douglas would have an hour after Lincoln spoke. They would be rewarded after listening to his three hours by hearing Douglas "skin me," as Lincoln put it.[1]

It was a modest joke—there was still time, almost six years, in fact, not to think of the mass slaughter to come—but the occasion was serious enough. Similar crowds had gathered throughout the North, beginning in late May when the bill passed. Douglas reported that he could have traveled from Washington to Illinois

by the light of his own burning effigies. These passionate crowds gathered to protest because of a fundamental change in the way that Americans were dealing with slavery in the territories. Abraham Lincoln answered their call.

The "Perfect" Storm

The Kansas-Nebraska Act was inspired by Douglas's determination to organize Nebraska Territory. That territory included Kansas, Nebraska, and the entire remaining lands of the Louisiana Purchase from what is now the northern border of Oklahoma to Canada. It was a huge gash of land which, since the Missouri Compromise of 1820, had been considered free soil. But Douglas's bill made the compromise "null and void," and Free Soil supporters were outraged as their hopes for the region faded. Douglas proposed that popular sovereignty replace congressional prohibition in this land. Local voters would determine whether free or slave society would prevail.

It was a profoundly important issue because most Americans envisioned their future in terms of the West. For millions of Northerners, free soil in the West meant personal opportunity and solutions. This was especially true in those older states where industrialization was beginning to breed inequality. Horace Greeley had told young men to go west as a safety valve for city woes. But if the Missouri Territory of 1820 now housed slavery, moving west for poor families meant exchanging one unequal society for another. Wealthier folk forecast trading the hope of prosperity for the paralysis of slavery. Iowa senator James Grimes described the crisis: "Shall populous, thriving villages and cities spring up all over the face of Nebraska, or shall unthrift and sparseness, stand still and decay, ever characterize that State? Shall unpaid, unwilling toil, inspired by no hope and impelled by no affection, drag its weary, indolent limbs over that State?"[2] The Nebraska bill threatened the prospect of the promising future, snatched it away from Northerners who had held it in their hands since 1820. When Douglas ended his successful struggle to pass the bill, he prophesied, "It will raise a hell of a storm." He underestimated;

it raised the "perfect" storm—one strong enough to blow away the established party system and to create, in two years, a political party that dominated the national agenda for decades.[3]

Lincoln's Return to Politics

The Kansas-Nebraska Act brought Abraham Lincoln back fully into the political arena. Since his one term in Congress, from 1847 to 1849, he had kept up with politics, giving a few pro-Whig speeches in campaigns and advising others on how to appeal to audiences. But most of his time had been spent building a prosperous law practice, being the titular head of his family, and playing with his children. As an 1860 biography by William Dean Howells put it, Lincoln was "successful in his profession, happy in his home, secure in the affection of his neighbors, with books, competence, and leisure—ambition could not tempt him."[4]

There was a certain moodiness about him in these years, perhaps seeing his career in politics stalled. But there also was a stability and order in day-by-day life and perhaps also a sense of orderliness in the law that he was mastering. He had spoken often of the need for orderly change in the nation. In his 1838 Lyceum Address, he emphasized, "Passion has helped us; but can do so no more. It will in future be our enemy. Reason, cold, calculating, unimpassioned reason, must furnish all the materials for our future support and defence."[5] He had been frightened at the disorder in the mind of his young friend Matthew Gentry, and wrote a long poem about his madness. His temperance address spoke of "*mind*, all conquering *mind*," defeating "Fury" and producing a "Reign of Reason."[6] Lincoln was a passionate believer in the nation's political and legal institutions, and this belief that they were stable, as much of his world now was, may have also lent a certain calm, perhaps even a sort of contentment, to his postcongressional life.[7]

Lincoln may have been coming to terms with the presence of slavery in the country. He hated the institution. He had detested slavery ever since he took two trips on flatboats to New Orleans as a young man and had been exposed to markets selling children,

men, women, and "fancy girls." At the same time Lincoln confessed for years that he did not know how to end the institution. He also feared that abolitionists were threatening the Union and Constitution.

Lincoln's first written protest against slavery equally damned Southern slaveholding and abolitionists. Yet about this time he had also written a fragment on slavery that deflated proslavery arguments. Did people justify slavery on the grounds of color and intellect? Then light-skinned smart people were natural masters. But as he considered ending the institution, he was increasingly attracted to colonization, a slow but steady practice of freeing slaves and then inducing them to return to Africa or to the Caribbean.[8] He had his doubts about the practicality of that solution, but to Lincoln it was the best idea available. At least it might be a way to make a start somewhere. While colonization might get things underway, Lincoln also believed that the constitutional process set up in Philadelphia in 1787 also would work gradually to end slavery.[9]

These ideas lay latent up until May 30, 1854. Then the Kansas-Nebraska Act passed Congress, and the crisis was upon him and the nation. In Lincoln's words, Douglas's bill "took us by surprise—astounded us. . . . We were thunderstruck and stunned; and we reeled and fell in utter confusion. But we rose each fighting, grasping whatever he could first reach—a scythe—a pitchfork—a chopping axe, or a butcher's cleaver. We struck in the direction of the sound."[10]

The ominous "sound" was made by Douglas reviving not only the territorial question but also the question of slavery's impact on the Union and the Constitution. From the days of the founding of the nation, when slavery had been "the witch at the christening," through the 1820s and 1830s, when nullification, gag rules, and anti-abolitionist mobs stirred passions, into the 1840s and the crisis over the Mexican-American War, and now into the mid-1850s, the peculiar institution had endangered the Union and troubled the polity. Many thought that the Compromise of 1850 had interred the beast; the election of 1852 saw the anti-slavery Free Soil Party lose half its of the over 291,000 votes it had

gained four years earlier. But the Kansas-Nebraska Act showed how profoundly wrong they were.

Douglas thought his bill would settle the issue. He had other goals in mind, of course. He would personally benefit from opening a new territory where he had invested, and he believed he could attract the votes of expansionists to the Democratic Party by opening up a vast new tract of land. His "popular sovereignty," as he called it, would build on the Jacksonian catechism of local self-government, in which democratic sovereigns shaped the communities where they lived, away from the control of a distant and hungry national power.

Emphasis on local democratic sovereignty would address the slavery question in three basic ways. First, it would protect slavery within the states and allow it an opportunity to grow in the territories. If slavery was established locally, outside agitators and nationalizing lawmakers would cease their meddling. Second, by making slavery a local matter, slave states could have their right to hold slaves respected equally with the rights of free states not to hold them. Southern congressmen had insisted that Northern congressional majorities, influenced by antislavery feelings, disparaged and threatened their institutions. By opening the new lands to pioneers for slavery and freedom, this bill would make those majorities irrelevant and place slavery and free soil on an equal footing. The third advantage was a more practical one. If slavery's fate was decided in distant territories, Congress would not become a snarling bear pit when the slavery expansion question was broached; the Union would not be threatened by turbulent congressional debate.[11]

Douglas seems to have believed that popular sovereignty would produce free territories. Freedom would be the inevitable victor. But because his party's base was slaveholding Dixie, the "Little Giant" kept this comparatively quiet. And yet his relative silence reflected his personal feelings that slavery, while an unfortunate institution, was not the moral outrage that many Northerners proclaimed. Years of compromise and negotiation with slavery's defenders in his party may have helped forge that feeling.[12]

Douglas's position was a powerful one, for self-government was the basic experience and one of the fundamental ideas of the nation. Americans of the mid-nineteenth century voted in percentages of up to 90 percent, staffed hundreds of thousands of juries, held and then rotated offices in a similar number of local governments, and heard the local concerns of unnumbered paeans of the democratic processes. If Douglas could wrap national expansion in this ideal, he would rally large numbers of Americans to his side. If slavery and self-government were intertwined, then slavery might advance and self-government might be defined as the right to hold slaves wherever there was self-government. Democracy and slavery would be united. Slavery might be adopted not only in the territories but also in free states, for both places were built upon self-government.[13]

Lincoln waited several months before challenging Douglas. Busy with major law cases, he was testing the political winds and considering the consequences of Douglas's bill for his political future. Lincoln also waited because it took him awhile to marshal all his arguments against this dangerous new direction. By the fall, he was ready.[14]

Lincoln's Response to the Nebraska Bill

Lincoln believed Douglas was wrong at a basic level—wrong fundamentally because the "Little Giant" put slavery and equal liberty on balanced scales and didn't care which side won. Lincoln believed so deeply in the evil of expanding slavery that flipping coins (or votes) on the subject was unacceptable. One did not gamble that voters might stop slavery's expansion. Voters might favor slavery, and that would be a calamity, for slavery was the most dangerous and destructive element in American life. It was dangerous for several general reasons. He told the Peoria crowd, "I hate it because of the monstrous injustice of slavery itself. I hate it because it deprives our republican example of its just influence in the world—enables the enemies of free institutions, with plausibility, to taunt us as hypocrites—causes the real friends of freedom to doubt our sincerity, and especially because it forces

so many really good men amongst ourselves into an open war with the very fundamental principles of civil liberty—criticising the Declaration of Independence, and insisting that there is no right principle of action but *self-interest.*[15]

Lincoln's statement represented a strong indictment in terms of the nation's image. But Lincoln had other reasons for his hatred of slavery and thus his opposition to Douglas's law. He may have shared his party's nightmare of what a slave society was like. He was consistent in defending the North's lower-class workers and their right to rise. He compared them with the slaves whose servitude was unshakable. He said, "New free States are the places for poor people to go to and better their condition."[16]

Lincoln's main attack on popular sovereignty took a different tack, going down to what he believed were the basic and shared principles of the nation. First of all, Lincoln said that he was devoted to the principle of popular sovereignty—people should determine what laws they would obey. But this was true only where all the governed had an equal right to make and consent to the laws. In the words of Stephen Douglas, however, African Americans had no rights; whites could make and keep them slaves. The right to self-rule had been twisted into the right to rule others. As Lincoln said, "If the negro is not a man, it is consistent to apply the sacred right of popular sovereignty to the question as to whether the people of the territories shall or shall not have slavery; but if the negro . . . *is* a man then there is not even the shadow of popular sovereignty in allowing the first settlers . . . to decide whether it shall be right in all future time to hold men in bondage."[17]

Lincoln later rephrased his position: "But if the negro *is* a man, is it not to that extent, a total destruction of self-government, to say that he too shall not govern *himself*? When the white man governs himself that is self-government; but when he governs himself, and also governs *another* man, that is *more* than self-government—that is despotism."[18]

Lincoln v. Douglas

The conflict between Lincoln and Douglas was an old one, as Harry Jaffa observes. It was the issue between Socrates and Thra-

symachus in Plato's *Dialogues*. Jaffa says that the Douglas doctrine of popular sovereignty meant that "in a democracy justice is the interest of the majority, which is 'the stronger.' Lincoln, however, insisted that the case for popular government depended on a standard of right and wrong independent of mere opinion and one which was not justified merely by counting heads." Jaffa continues, "The Lincolnian case for government of the people and by the people always implied that being for the people meant being for a moral purpose that informs the people's being."[19]

Douglas defined democracy in quantitative terms. Democracy was a government where the people of the society were the source of legitimate power and authority. Lincoln added an ethical, qualitative dimension by insisting, as an ancient author did, that it is "the lawful rule of the many in the true interests of the community."[20] To Lincoln, the safety of the community in the mid-1850s demanded that slavery be excised, for slavery was against the nation's "true interest."

Lincoln was not arguing only from abstract principles. His challenge to Douglas was more specifically a fight grounded in the history of those ideals. What had the framers of the Constitution and the Declaration of Independence believed and done about slavery? In the world of the framers here again was a struggle for the minds and hearts of the Northern populace. Since both sections grounded themselves in reverence for the framers, the potential for unity lay in this argument. If Douglas could prove that the nation's history endorsed his view, then slavery would gain added support even if Douglas cared not whether it was voted up or down. Voting it up or down, with little interest in equality, Douglas argued, would be endorsed by the founders.

But Lincoln claimed the history of the nation embraced equality and liberty. His founders believed that slavery should not expand. They showed their feelings when they outlawed slavery in the Northwest Territory. They proved it when they outlawed the slave trade in 1807. They restrained some of the internal slave trade; they declared international slave trading piracy, punishable by death. Meanwhile, "five or six of the original slave States

had adopted systems of gradual emancipation."[21] Their feelings, argued Lincoln, were expressed in the Missouri Compromise, which outlawed slavery north of 36°30′ in the lands gained by the Louisiana Purchase.

The authors of the Missouri Compromise knew the dangers to the Union that slavery posed. Lincoln understood that in 1820 firebells had rung. Missouri's admission to the Union sparked "the first great slavery agitation in the nation. This controversy lasted several months and became very angry and exciting. . . . Threats of breaking up the Union were freely made; and the ablest public men of the day became seriously alarmed."[22] From that conflict a compromise emerged that had preserved the Union in peace for almost forty years.

At one time, Lincoln observed, even Douglas himself had praised that compromise. In 1849 Senator Douglas said that it "had received the sanction and approbation of men of all parties in every section of the Union. It had allayed all sectional jealousies and irritations growing out of this vexed question, and harmonized and tranquilized the whole country." Douglas had continued, "All the evidences of public opinion at that day, seemed to indicate that this [Missouri] Compromise had become canonized in the hearts of the American people, as a sacred thing which no ruthless hand would ever be reckless enough to disturb."[23] Lincoln allowed that Douglas had the right to change his mind if he had good reason to do so. But for Lincoln there was no good reason to change minds on this imperative agreement.

Legalisms

Douglas's law, to Lincoln, broke a contract (and here Lincoln's respect for the legal order rose up again). What Douglas had done was to break the agreement between North and South that slavery would be tolerated by necessity where it existed but excluded from the territories, like those of the Northwest, where it did not exist. The North had kept its side of the bargain: "We have held the Missouri Compromise as a sacred thing."[24] But Douglas, speaking for Southern expansionists, was now breaking that bargain.

Douglas tried to show that the bargain had already been renegotiated and that continuity, not disruption, marked his course. The Compromise of 1850, he argued, had after all recognized the popular sovereignty principle in New Mexico and Utah lands. The "Little Giant" asserted that by agreeing to this settlement, the North had "in principle" given up the Missouri Compromise. But Lincoln demanded that the agreement be read carefully: read for what it said, not for its possible inferences. Neither party to that settlement had argued that Missouri Compromise land had anything to do with 1850. In fact, Lincoln asserted, part of the measure promised that the Missouri Compromise would be undisturbed in the remaining territories of the Louisiana Purchase.[25]

The North agreed to the popular sovereignty principle here because it got in return what lawyers call "consideration." California became a free state, and the slave trade ended in Washington, D.C. That was the 1850 bargain. But in the 1854 "contract" the North gave everything "*without any equivalent at all,*" as Lincoln put it, and the slave states got everything.[26] No one could sensibly infer any bargain here. Without consideration, no valid contract could exist.

The framers had known that slavery was the largest threat to the Union and that a direct attack would end the Union. Lincoln believed that the constitutional system set in place by the framers had placed slavery "where the public mind shall rest in the belief that it is in the course of ultimate extinction."[27] But Douglas had derailed the process: "Until the introduction of the Nebraska Bill," Lincoln said, "the public mind did rest, all the time, in the belief that slavery was in course of ultimate extinction. That was what gave us the rest that we had through that period of eighty-two years."[28] Douglas had abruptly challenged that system and that belief, which was the only hope for the destruction of slavery without disunion.

Lincoln's approach was deeply conservative, despite his evocation of 1776. In 1776 the Declaration's claims had started a revolution. Subsequent revolutions in Europe and Latin America showed the power of the ideals of 1776 to unmake governments

and to shake the social order. But Lincoln's argument wasn't for a new day. It was an argument to return to the old ways, old ways which had allowed the public mind to rest as the nation progressed, carefully, to greater liberty and opportunity. One of his accusations against Douglas's act was that it was "NEW," and Lincoln capitalized the word.[29]

Lincoln feared the awesome power of slavery and the depth of anger that it inspired. He described it almost as an elemental force, some giant "rough beast" capable of destroying the nation. Opposing it was the force of freedom. "These two great ideas," said Lincoln, "have been kept apart only by the most artful means. They are like two wild beasts in sight of each other but chained and held apart. Some day these deadly antagonists will one or the other break their bonds, and then the question will be settled."[30]

Lincoln used another metaphor to describe how threatening slavery was. This time the beasts were more docile but no less inexorable. Imagine a case, he said, where Lincoln has a fine meadow next to a meadow owned by John Calhoun. Calhoun buys a bunch of cattle and uses up his grassland. "Calhoun then looks with a longing eye on Lincoln's meadow, and goes to it and throws down the fences, and exposes it to the ravages of his starving and famishing cattle." When Lincoln objects, Calhoun says, "It is my true intent and meaning not to drive my cattle into your meadow, nor to exclude them therefrom, but to leave them perfectly free to form their own notions of the feed, and to direct their movements in their own way."[31] By tearing down the fences, Douglas has unleashed a force driven by almost animal instincts.

Lincoln was familiar with the force of self-interest or acquisition—he watched it, for it was all around him—a force that drove people west to get their piece of the frontier. Douglas had appealed to it by saying go into the West, get what you can, do what you want with it, so long as majorities approve. But according to Lincoln, that was the direction of disorder. "The genius of Discord himself, could scarcely have invented a way of again getting us by the ears, but by turning back and destroying the peace measures of the past. The councils of that genius seem to have prevailed."[32]

Douglas knew the power of an argument on the grounds of historical continuity—he claimed that the Missouri Compromise, as the rule of settling new territory, had been withering away for years now. He was merely giving it a decent burial. Nothing was revolutionary here. In fact, the Douglas bill rested, he said, on the faith of the founders in the nation's tradition of local self-government—popular sovereignty was its modern name. Calm acceptance, not demagogic hysteria, was needed.

Lincoln and the Nebraska Bill Threat

Lincoln, unlike Douglas, saw little reason to be calm. He certainly praised careful reason, but the Kansas-Nebraska Act was a challenge that created disorder. He believed that the Nebraska bill did not save the Union but threatened it by opening up the most dangerous question in the polity. It unleashed the forces of disorder and disunion. At Peoria in October 1854, with notable prescience, Lincoln predicted:

> Some yankees, in the east, are sending emigrants to Nebraska, to exclude slavery from it. . . . But the Missourians are awake too. They are within a stone's throw of the contested ground. They hold meetings, and pass resolutions, in which not the slightest allusion to voting is made. They resolve that slavery already exists in the territory . . . and that abolitionists shall be hung, or driven away. Through all this, bowie-knives and six-shooters are seen plainly enough; but never a glimpse of the ballot-box. And, really, what is to be the result of this? Each party WITHIN, having numerous and determined backers WITHOUT, is it not probable that the contest will come to blows, and bloodshed? . . . And if this fight should begin, is it very likely to take a very peaceful, Union-saving turn? Will not the first drop of blood so shed, be the real knell of the Union?[33]

Continuing his charge that the Nebraska measure endangered order, Lincoln insisted that Douglas lacked a moral vision that restrained self-interest. The "Little Giant," observed Lincoln, saw

the African American not as a man but as a thing, a commodity subject to a heartless marketplace. Slavery was a matter of utter indifference to Douglas. But the mass of mankind, Lincoln said, shared a moral idea. They considered slavery to be evil—a great moral wrong that "lies at the very foundation of their sense of justice." That included Southern white people as well as abolitionists. Lincoln said, "If slavery did not now exist amongst them, they would not introduce it."[34] Furthermore, they constantly showed their feelings against slavery by their reaction to the slave trade and especially to the "sneaking individual, of the class of native tyrants, known as the 'SLAVE DEALER,'" who bought and sold women and children. In addition, white Southerners were mostly responsible for the 430,000 free blacks in the nation as of 1850. All these cases showed that they had an innate sense of justice "and human sympathy, continually telling you, that the poor negro has some natural right to himself."[35] A generally held sense of the slave's right might create, it seems, a source of unity to challenge disunion.

Lincoln skirted danger at the same time he reached for unity. There was an echo here of abolitionist Theodore Dwight Weld. Writing in 1839, Weld said that "every man knows that slavery is a curse. Whoever denies this, his lips libel his heart. Try him; clank the chains in his ears and tell him that they are for *him.* Give him an hour to prepare his wife and his children for a life of slavery. Bid him make haste and get ready their necks for the yoke, and their wrists for the coffle chains, then look at his pale lips and trembling knees, and you have *nature's* testimony against slavery."[36]

Lincoln recognized that to echo Weld without qualification (maybe even with it) was suicidal in Illinois. Abolitionism horrified voters because it threatened the social order and the racial hierarchy as well as the stability of the Union. Lincoln was a prime target because of his attacks on slavery. One central Illinois paper proclaimed that "Lincoln's niggerism has as dark a hue as that of Garrison or Frederick Douglass."[37] He was the "high-priest of abolitionism," another claimed.[38] Douglas and other Democrats

played the race card against Lincoln and his party in every campaign from the 1850s forward. So Lincoln insisted that he didn't seek political and social equality with black people and that he did want the territories free for "white" settlers.[39] To do otherwise would have been to end his political career and hence his future actions as emancipator and unifier. But Lincoln in Peoria was appealing to audiences from both parts of Illinois and to national sentiment. While reaching out to conservatives, he kept the lines open to his party's gadflies.

He did not totally condemn abolitionists. They were right about slavery being evil: "Stand with anybody that stands RIGHT. Stand with him while he is right and PART with him when he goes wrong. Stand WITH the abolitionist in restoring the Missouri Compromise; and stand AGAINST him when he attempts to repeal the fugitive slave law. In the latter case you stand with the southern disunionist. What of that? You are still right. In both cases you are right."[40] But the rightness of the cause was not the main benefit of this position; order was. "In both cases," Lincoln said, "you oppose the dangerous extremes. In both you stand on middle ground and hold the ship level and steady. In both you are national and nothing less than national. This is good old whig ground."[41]

Lincoln and Solutions

After all his outreach to North and South, to moderates and conservatives, in the interests of preserving union and order, Lincoln could not conceive of any practical way to resolve the crisis. At the end of his Peoria speech he returned to the ancient ideal of the nation that slavery was an evil to be put in the course of ultimate, gradual extinction.

Since, in Lincoln's view, most Americans agreed on this basic principle, there was some hope of changing the nation's direction as it tumbled toward the disruption and disorder (and possibly war) spawned by the Kansas-Nebraska Act. The answer lay in the stability of a better past, a time when the nation's framers had established principles that unified. Lincoln said, "Let us re-adopt the Declaration of Independence" and restore the Missouri Com-

promise: "For the sake of the Union, it ought to be restored."[42] If that didn't happen, then "the spirit of mutual concession—that spirit which first gave us the constitution, and which has thrice saved the Union—we shall have strangled and cast from us forever."[43] Without restoration, the forces of mistrust, conflict, and law-breaking would continue to boil: "The South flushed with triumph and tempted to excesses; the North betrayed, as they believe, brooding on wrong and burning for revenge. One side will provoke; the other resent. The one will taunt, the other defy; one agrees [aggresses?], the other retaliates. Already a few in the North, defy all constitutional restraints, resist the execution of the fugitive slave law, and even menace the institution of slavery in the states where it exists. Already a few in the South, claim the constitutional right to take to and hold slaves in the free states—demand the revival of the slave trade."[44] Unless the 1820 compromise was revived, extremists on both sides would "fatally increase," and who could foretell what disruptions might follow? But with the restoration of the Compromise, "We thereby restore the national faith, the national confidence, the national feeling of brotherhood."[45]

Lincoln's eloquence rose in a vision of the benefits of restoring the ancient faith: "Let us re-adopt the Declaration of Independence, and with it, the practices, and policy, which harmonize with it. Let north and south—let all Americans—let lovers of liberty everywhere—join in the great and good work. If we do this, we shall not only have saved the Union; but we shall have so saved it, as to make, and to keep it, forever worthy of the saving. We shall have so saved it, the succeeding millions of free happy people, the world over, shall rise up, and call us blessed, to the latest generations."[46]

But this noble sentiment masked Lincoln's continuing, indeed increasing, anger at the Kansas crisis. Almost a year later, in August 1855, his anger still burned, as elections in Kansas had witnessed voter fraud, stuffed ballot boxes, and a growing civil war. Writing a private letter to his friend Joshua Speed, Lincoln insisted that the Kansas-Nebraska measure had none of the features of law. "I

look upon that enactment not as *a law* but as *violence* from the beginning. It was conceived in violence, passed in violence, is maintained in violence, and is being executed in violence."[47]

The letter was a sign of a new tone and viewpoint, for Lincoln no longer spoke of Americans North and South as sharing the hatred of slavery and love of the Union or as striving peacefully together to silence the firebell in the night. No longer did he talk at any length of both Southerners and Northerners, each responsible for slavery and trapped by their geography and culture. As the 1850s passed, he said he didn't question motives of opponents, but that is what he unquestionably did. Provoked by new challenges from supporters of slavery—the *Dred Scott* decision, Preston Brooks's caning of Charles Sumner, and the continuing violence in Kansas—Lincoln's goal of unity faded.

Lincoln's "House Divided" speech revealed a new Lincoln in his story of where the threat of slavery originated. Rhetorically, he hatched a conspiracy of "Stephen," "Franklin," "Roger," and "James"—each working to expand slavery, not just into Northern territories but into every state in the Union. Once Lincoln had called upon all Americans to embrace and reestablish the Declaration. There was bitterness now: "When we were the slaves of King George, and wanted to be free, we called the maxim that 'all men are created equal' a self evident truth; but now when we have grown fat, and lost all dread of being slaves ourselves, we have become so greedy to be *masters* that we call the same maxim 'a self-evident lie.' The fourth of July has not quite dwindled away; it is still a great day—*for burning firecrackers!!!*"[48]

Lincoln painted pictures now of an unshakeable slave institution that defied all change and amelioration. Mammon was after the slave, Lincoln said, "ambition follows, and philosophy follows, and the Theology of the day is fast joining the cry."[49] Lincoln continued, "They have him in his prison house; they have searched his person, and left no prying instrument with him. One after another they have closed the heavy iron doors upon him, and now they have him, as it were, bolted in with a lock of a hundred keys, which can never be unlocked without the concurrence of

every key; the keys in the hands of a hundred different men, and they scattered to a hundred different and distant places; and they stand musing as to what invention, in all the dominions of mind and matter, can be produced to make the impossibility of his escape more complete than it is."[50] Lincoln's shift in tone by the late 1850s reflected a belief that slavery and popular sovereignty created an irresolvable crisis, one in which victory, not compromise or reconciliation, must be the end result.

Conclusion

At Peoria, Lincoln had tried to build bridges to the South. He said that he believed that Northerners and Southerners, if they changed location, would adopt the same institutions. "They are just what we would be in their situation." Yankees would become slaveholders, Southerners would adopt free-soil culture. He claimed no moral superiority and spoke of his affection for the South. "When southern people tell us they are no more responsible for the origin of slavery, than we; I acknowledge the fact."[51] Furthermore, Lincoln wanted to discuss the issues on their merits, not ad hominem. "I do not propose to question the patriotism, or to assail the motives of any man, or class of men. . . . I also wish to be no less than National in all the positions I may take."[52]

But by 1858, infected by the Kansas-Nebraska crisis, Lincoln had become an advocate for sectional triumph, facing a crisis hatched by politicians behind closed doors who sought to create a nation of slave states as well as territories. "Either the opponents of slavery will arrest the further spread of it, and put it in the course of ultimate extinction; or its advocates will push it forward till it shall become alike lawful in all the States, old as well as new."[53] Those words were written before the "House Divided" speech, but Lincoln liked them well enough to use them in that later speech and to stand forth as the leader of Illinois Republicans in a fight to destroy the institution which he had long feared would create a disordered society and Union.

The hope of compromise had failed. From time to time Lincoln would speak to, and of, the Southern population, caught

in the snares of slavery. But it was too late by then. The men of the 1850s, including Lincoln, perhaps especially Lincoln because of his great talents and influence, could not repeat the accomplishment of the framers in 1776 and their successors in 1820. The earlier compromise had quieted the firebell, but three decades later it rang more loudly than ever. The "relentless battle of self-interests" had prevailed. The Nebraska crisis revealed that, as poet Julian Symons wrote on the eve of another conflagration, "The trouble is real; and the verdict is final against us. . . . And fast as confetti the days are beginning to fall."[54]

Notes

1. Abraham Lincoln, in Roy P. Basler, ed., *The Collected Works of Abraham Lincoln*, 9 vols. (New Brunswick NJ: Rutgers University Press, 1953–1956), 2:247–83.
2. Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York: Oxford University Press, 1970), 56–57.
3. See Robert W. Johannsen, *Stephen A. Douglas* (Urbana: University of Illinois Press, 1997) for Douglas's views.
4. William Dean Howells, *Life of Abraham Lincoln* (Springfield IL: Abraham Lincoln Association, 1938), 69–70.
5. *Collected Works*, 1:115.
6. *Collected Works*, 1:279.
7. *Collected Works*, 1:1, 385. I follow some of David Herbert Donald, *Lincoln* (New York: Simon & Schuster, 1995), 162–65. See also Douglas Wilson, "Young Man Lincoln," in Gabor Boritt, ed., *The Lincoln Enigma: The Changing Faces of an American Icon* (New York: Oxford University Press, 2001), 31–33.
8. "Inducing" shows that Lincoln at no time believed in forced deportation. See Phillip S. Paludan, "Lincoln and Colonization: Policy or Propaganda," *Journal of Abraham Lincoln Association* 25 (Winter 2004): 23–37.
9. Speaking of the practicality of colonization, Lincoln said, "Whatever of high hope, (as I think there is) there may be in this, in the long run, its *sudden* execution is impossible." *Collected Works*, 2:255. Italics added.
10. *Collected Works*, 2:282.
11. Michael Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), chapter 5.
12. Johannsen, *Douglas,* 202–5, 570–71, 642–43.
13. See Phillip S. Paludan, "Taney, Lincoln, and the Constitutional Conversation," in Jennifer Lowe, ed., *The Supreme Court and the Civil War*, special edition of the *Journal of Supreme Court History* (1996): 22–36; and "The American Civil War Considered as a Crisis in Law and Order," *American Historical Review* 75 (October 1972): 1013–34.

14. Robert Johannsen, *Lincoln, the South, and Slavery* (Baton Rouge: Louisiana State University Press, 1991), 22–25.
15. *Collected Works*, 2:255.
16. *Collected Works*, 2:268.
17. *Collected Works*, 2:239.
18. *Collected Works*, 2:266.
19. Harry V. Jaffa, *Crisis of the House Divided: An Interpretation of the Issues in the Lincoln-Douglas Debates* (Chicago: University of Chicago Press, 1982), 3. Jaffa is relied upon for his discussion of the ideological clash between Lincoln and Douglas.
20. Paul Corcoran, "The Limits of Democratic Theory," in Graeme Duncan, ed., *Democratic Theory and Practice* (New York: Cambridge University Press, 1983), chapter 2. A modern parallel of this debate is seen in the conflict between Ronald Dworkin and H. L. A. Hart. See Dworkin, *Law's Empire* (New York: Harvard University Press, 1986), and Hart, *The Concept of Law* (New York: Oxford University Press, 1994).
21. *Collected Works*, 2:275.
22. *Collected Works*, 2:250.
23. *Collected Works*, 2:251–52.
24. *Collected Works*, 2:258.
25. See www.ourdocuments.gov for text of the Compromise. No clear provision supports Lincoln's claim. The establishment of the Texas border does mention that 36°30′ will be its northern border.
26. *Collected Works*, 2:258–59.
27. *Collected Works*, 2:461.
28. *Collected Works*, 2:492.
29. *Collected Works*, 2:274.
30. Don E. Fehrenbacher and Virginia Fehrenbacher, *Recollected Words of Abraham Lincoln* (Stanford: Stanford University Press, 1996), 245.
31. *Collected Works*, 2:229–30.
32. *Collected Works*, 2:270. Lincoln's devotion to the Declaration of Independence here revealed another aspect of the crisis that the Kansas-Nebraska Act generated. The Declaration proclaims two fundamentals: that "all men are created equal" and that "governments derive their just powers from the consent of the governed." There is a basic clash between these two fundamentals whenever the people do not consent to equality. That was exactly the conflict that defined the debate between Lincoln and Douglas. Douglas set consent as the highest principle; Lincoln affirmed equality. See Jaffa, *Crisis*.
33. *Collected Works*, 2:271–72.
34. *Collected Works*, 2:255.
35. *Collected Works*, 2:265.
36. Theodore Dwight Weld, *American Slavery as It Is: Testimony of a Thousand Witnesses* (New York: American Antislavery Society, 1839), 7–9.
37. As quoted in Benjamin Quarles, *Lincoln and the Negro* (New York: DaCapo, 1991), 39.

38. *Collected Works*, 2:366.
39. *Collected Works*, 2:256.
40. *Collected Works*, 2:273.
41. *Collected Works*, 2:273.
42. *Collected Works*, 2:276.
43. *Collected Works*, 2:272.
44. *Collected Works*, 2:272.
45. *Collected Works*, 2:272.
46. *Collected Works*, 2:276.
47. *Collected Works*, 2:321.
48. *Collected Works*, 2:318.
49. *Collected Works*, 2:404.
50. *Collected Works*, 2:404.
51. *Collected Works*, 2:255.
52. *Collected Works*, 2:248.
53. *Collected Works*, 2:452.
54. Julian Symons, "Pub," in his book *The Second Man* (London: Routledge, 1943). Whether this failure to compromise was a positive thing for ending slavery is not a position I'm discussing now. It certainly was a negative for preserving the Union. See Harold M. Hyman, "The Narrow Escape from the 'Compromise of 1860': Secession and the Constitution," in Harold M. Hyman and Leonard W. Levy, eds., *Freedom and Reform: Essays in Honor of Henry Steele Commager* (New York: Harper & Row, 1967), 149–66.

Chapter Six

Frederick Douglass and the Kansas-Nebraska Act

From Reformer to Revolutionary

TEKLA ALI JOHNSON

The radicalization of Frederick Douglass, a process resulting from his interpretation of key events and leading to his acceptance of armed resistance against slavery, was sealed with the passage of the Fugitive Slave Act of 1850 and then the Kansas-Nebraska Act of 1854. In 1843, Douglass faced a mob at Pendleton, Indiana, and fought back as the crowd tried and succeeded in silencing his abolitionist speech. Before the riot was over, Douglass had been beaten unconscious and suffered a broken hand. He would later remember the Pendleton beating as having solidified his thinking about antislavery pacifism, which he concluded was ineffective.[1] Although a professed pacifist for years, Douglass—first privately and then publicly—rejected the principle of nonviolent resistance, embracing the idea that liberation would require a physical as well as a moral fight.

Having once been a nonresistant Garrisonian, Douglass explained the reversal in his position by pointing to the necessity of armed self-defense because of the passage of the Fugitive Slave Act of 1850. The act rendered free blacks in Northern states vulnerable to kidnapping by Southern slaveholders, and blacks' rights to a legal defense were forfeited by the new law. Congressional debate over whether the Nebraska and Kansas territories would become free soil or allow slavery heightened Douglass's commit-

ment to the use of force as necessary for combating slavery, slave catchers, and the expansion of the institution. Douglass's conviction that violence was necessary would cause him to gravitate toward revolutionary thought and lead him to join the conspiracies of his friend John Brown. Thus Douglass's open advocacy of the use of violence publicly began in 1850 and was validated and strengthened with the passage of the Kansas-Nebraska Act in 1854. It peaked with the opening of the American Civil War.[2]

The Reformer Douglass before 1850

In 1843, Douglass had condemned Henry Highland Garnet's speech, "Address to the Slaves of the United States of America," delivered at the National Negro Convention in Buffalo, New York. Garnet urged open rebellion among the enslaved masses. Only recently liberated from slavery and under the tutelage of pacifist William Lloyd Garrison, Douglass told the delegates that he wished to try the "moral means a little longer." However optimistic he was during his first years as a free man, Douglass would succumb to the reality that instead of losing its grip, in the face of the abolitionist movement, slavery's hand was actually tightening. Addressing the convention in Buffalo, Douglass counseled that an insurrection would fail because 3 million enslaved Africans were outnumbered by 17 million whites and that the lack of weapons and other necessities for armed combat in the hands of African Americans meant an uprising would most likely fail. Douglass joined Alexander Crummell and other members of the Committee on Abolition in issuing a second report in 1847, arguing against the feasibility of using violence to end slavery.[3]

For nearly the entire 1840s, Douglass would say publicly that he preferred agitation to force. However, a shift in Douglass's position crept into his speeches by 1848, when he delivered "The Slave's Right to Revolt" before a New England Anti-Slavery Society meeting at Boston on May 30, and again in June 1849, when Douglass told a crowd at the city's Faneuil Hall that he eagerly awaited news that enslaved Africans "were engaged in spreading death and devastation."[4] Douglass had broken from Garrison's tutelage three

years earlier when, against Garrison's advice, he began publishing his own newspaper, the *North Star*. He was therefore, after 1847, free to take or leave Garrison's pacifism, and he discarded it.

Having reversed his own thinking on the expediency of pacifism in fighting slavery, Douglass joined other black leaders who began endorsing the use of violence as necessary to protect themselves from slave catchers in early 1850. Douglass's initial public statements on the practical use of force took form first in his suggestion that the South be expelled from the Union. Douglass predicted that enslaved Africans would pick up arms against slavery if the North (however begrudgingly) were not united with the South in support of the institution. Published in the *National Anti-Slavery Standard* in 1850, Douglass wrote, "I welcome the bolt, whether from the North or the South, from heaven or hell, which shall shiver the Union to pieces. . . . Let this unholy, unrighteous union be dissolved." Robert C. Dick argues that Douglass believed slavery would not end and that free African communities would not be left in peace without returning the slave owners' violence with violence.[5]

The Fugitive Slave Act

While Frederick Douglass suggested that enslaved Africans had the right to revolt—"Who dare say that the criminals deserved less than death at the hands of their long abused chattels?"—yet it was the immediate threat of bounty hunters brought on by passage of the Fugitive Slave Act of 1850 which moved Douglass to urge the participation of free Africans in fomenting armed revolt.[6] With his personal freedom and that of his family jeopardized, Douglass supported the protest movement brewing in opposition to the Fugitive Slave Act. In cities across the North, free Africans met to plan their survival under the new federal law, which precluded blacks from testifying in court, rendering their ability to challenge claims against their persons dubious. Now, if claimed by a slave catcher, their return to the South was certain, since free papers no longer guaranteed that accused men or women could convince a federal marshal or judge of their legal status.[7]

During the groundswell of resistance by abolitionists, Douglass unleashed a revolutionary discourse in both his public lectures and his newspaper that mirrored and informed the resistance movement. Historian Darlene Clark Hine put Douglass's reaction into perspective: "The Fugitive Slave Law of 1850 was one of the toughest and harshest measures the U.S. Congress had ever passed." Testimony of a white witness or legal papers from their home state enabled slave owners to demand the return of Africans living in the North. Worse yet, a financial incentive had been given to federal marshals, who were paid twice the amount for any Africans declared escapees as for those who were allowed to show evidence of their freedom. "Many white people and virtually all black people felt genuine revulsion over this crackdown on those who had fled from slavery to freedom," observed Hine.[8]

Douglass's insistence that free Africans defend themselves from slave catchers did not in itself place him at the forefront of a radical ideology. A politician as well as an abolitionist, Douglass's new approach was in step with the mood of the majority of free Africans. Representatives from the free black community passed a resolution at the National Negro Convention held in Portland, Maine, in 1850, condemning the Fugitive Slave Act as a law that threatened them all with the possibility of being returned to slavery. A measure, they argued, that nullified their right to a fair trial could not be just and "being left without legal and governmental protection for our liberties we shall . . . protect our own right to freedom at whatever cost or risk."[9] Douglass borrowed this rhetorical strategy from other antislavery activists to threaten slaveholding whites. Violence could result if they persisted in declaring "open season" on free Africans, and harm might befall those who made their living hunting human beings. The underlying message in his statements indicated that there were limits to white domination in the North and to slave catchers' penetrations of African American communities.

But was this only a rhetorical strategy for Douglass? Robert C. Dick argues that it was not and that the mere discussion of the likelihood of failure in rebellion, such as Douglass had uttered since the early 1840s, subtly suggested that if Africans' chances

of success were reasonably good, violence would be undertaken.[10] In the summer of 1852, Douglass addressed the Fugitive Slave Act directly in a speech to the National Free Soil Convention in Pittsburgh. In his talk Douglass argued that only reasonable laws were binding, and he proposed that slavery and slave catching were not only immoral but illegal. Those who engaged in such practices, he said, had to be dealt with on their own "barbaric" level: "The only way to make the Fugitive Slave Act a dead letter is to make half a dozen or more dead kidnappers."[11] This was the most radical speech Douglass had given to date. Here was Frederick Douglass, the moral suasionist and social reformer, urging a physical response—fatal blows—from free African Americans upon their oppressors. Using the argument of the nation's founders in establishing their right to independence from Great Britain, Douglass urged that the purpose of government "is for the protection of rights; and when human government destroys human rights, it ceases to be a government, and becomes a foul and blasting conspiracy; and is entitled to no respect whatever." Douglass said that a horse had more protection than an African, who was "therefore, justified in the eye[s] of God, in maintaining his right with his arm[s]."[12]

High-profile cases of men and women who had escaped the South but had been captured intensified abolitionist resistance to the search for fugitives. In June 1854, a few months before Douglass would give his Kansas-Nebraska bill speech in Chicago, slave catchers fell upon Anthony Burns, who had made his way from a plantation in Virginia by hiding on board a ship. Once at Boston, Burns wrote his family members back home to say that he was safe, and his former master intercepted the correspondence. Despite abolitionists' best efforts—breaking in the door of the jail at the federal courthouse and killing a U.S. deputy marshal who repelled their attack—Burns was not set free. Democratic president Franklin Pierce sent the U.S. Marines to Boston to uphold the Fugitive Slave Act, and with their aid Burns's former owner reclaimed him. Douglass was very much aware of the Burns case and that not even a vigilance committee's offer of cash to pay

for Burns's freedom could loosen him from the federal officials who held Burns for a slave owner. Douglass's response was a bitter diatribe published in his paper on June 1854. "The arms of the Republic have gloriously succeeded in capturing Anthony Burns—the clothes cleaner—in Brattle Street, Boston. . . . A few madcaps—dangerous ones . . . sought to rescue him; they said he was a man; that he was a brother . . . and that it was a sin to enslave him . . . but we sent these mischievous and infidel persons to prison, and told them to read the Bible." The abolitionists had, however, made such an uproar that hundreds of armed guards were needed to remove Burns from Boston.[13]

The Burns case and others like it radicalized moderate abolitionists, many of whom now supported physical resistance to slave catchers. Even William Lloyd Garrison, although presumably still a pacifist, was moved that year to burn a copy of the Constitution on the Fourth of July. Douglass for the first time put a premium on the value of antislavery violence, arguing that resisting slave catchers amounted to self-defense. In the summer of 1854, Douglass wrote an editorial in response to an article appearing in the *Rochester Daily American* that had condemned African American uses of violence against slave catchers. In "Is It Right and Wise to Kill a Kidnapper?" published in his own newspaper, Douglass argued that every citizen of Rochester, New York, who was of right mind would kill if necessary to protect his liberty.[14] Even as Douglass defended African American rights to security in the North, Congress voted to blur the distinction between free and slave states with the passage of the Kansas-Nebraska Act.

The Kansas-Nebraska Act

Illinois senator Stephen A. Douglas introduced the Nebraska bill primarily to open two new territories for white emigration and to facilitate the laying of the transcontinental railroad. His inclusion of a measure that allowed "popular sovereignty" to decide whether slavery would be legal there was meant to gain the "support of southern Democrats, who wanted slavery in at least one of the two new territories."[15]

Frederick Douglass had followed debate over the bill in Congress and had protested its passage. In October, he traveled to Illinois to square off with the senator and engage him in debate. "I have come into this state to confront in public debate, my distinguished namesake, the Hon. Stephen A. Douglas." Douglass said that the senator deserved berating because he had joined company with slaveholders.[16]

Speaking at Metropolitan Hall in Chicago, Douglass said that Senator Douglas imagined that he felt the sting of abuse when antislavery forces shouted him down during a recent speech and by the symbolic burning of his likeness by abolitionists. Stephen Douglas, the abolitionist observed, cried to the press that he was the "most abused man in the United States," when antislavery forces exposed his popular sovereignty as a proslavery concept.[17] Yet, Douglass opined, the senator had never felt the lash and other forms of abuse endured by those whom he wished to keep enslaved. Douglass argued that the sponsor of the Kansas-Nebraska Act was grossly insensitive to the plight of other human beings.

The Kansas-Nebraska Act also verified for Douglass the dishonesty of Democrats and Southern Whigs. They never intended to cease their drive for slavery's expansion, and the only purpose of the Compromise of 1850 was to suppress "all anti-slavery discussion." While Northern Whigs and Free Soilers were pacified, slave owners perfected the "extension of slavery over all the territories." Their goal all along had been the nationalization of slavery. Douglass told his audience that it was once thought that slavery would die out, but greed had rendered that hope now impossible, and the Nebraska bill boiled down to whether or not citizens were willing to repeal the Missouri Compromise, which for thirty-four years had limited slavery in Louisiana Purchase lands to south of 36°30′ north latitude.[18]

Proponents of the Kansas-Nebraska Act argued that the measure did not legalize slavery in the territories. Douglass conceded that on the surface this was true, that the bill said the question of slavery would be settled by the states' residents. He argued, however, that the sole purpose of the bill was to allow for slav-

ery's expansion. Otherwise, "it would not have repealed the law [the Missouri Compromise] . . . which had excluded slavery from those territories, and from those states which may be formed out of them."[19] The only portion of the bill that was forthright, according to Douglass, was the part that said it had no intention of excluding slavery from any territory.

He said that Senator Douglas made another false claim aimed at deceiving the public into believing that popular sovereignty did not open the territories to slavery. His argument that "slavery is the creature of positive law, and that it can only exist where it is sustained by positive law" was an intentional falsification of the facts. It was not true, Douglass reasoned, that slavery could exist only where it had been approved by legislation. "On the contrary, the instance cannot be shown where a law was ever made establishing slavery" where the condition did not already exist. The law, Douglass said, always followed the condition, and this is precisely what Stephen Douglas and other proslavery elements wished to allow to happen in Nebraska and Kansas. Frederick Douglass argued that the whole pretense that the Nebraska bill was not intended to expand slavery into the territories was a trap "in which to catch the simple."[20] "By the Missouri Compromise, slavery—an alien to the Republic, and enemy to every principle of free institutions, and having no right to exist anywhere—got one-half of a territory rightfully belonging to freedom.—You complained of that. Now a law is repealed whereby you may lose the other half also, and you are forbidden to complain."[21]

Douglass excoriated the senator on his home turf. The abolitionist called Stephen Douglas's pretense that slaveholders would guard the rights of slaves as if they were their own rights patently "absurd." They might as well argue that the wolf can legislate for the lamb as well as for himself. Stephen Douglas, he said, tells half-truths. Douglass further argued that proponents of the Nebraska bill had implied that the proposed law gave the right of self-government, but he observed that those who had read the bill for themselves knew otherwise. There is nothing in the bill that allows for self-government of the territories which fall under

the jurisdiction of the federal government. Returning to his fundamental objection, Douglass reemphasized that the only thing the Nebraska bill allowed was the practice of slavery, previously excluded from territories by both the Northwest Ordinance of 1787 and the Missouri Compromise of 1820.[22]

Douglass said that he wanted to meet with the author of the Kansas-Nebraska Act to discuss all of these points, as well as the author's faulty reasoning, but Stephen Douglas never met with Frederick Douglass on this occasion. Instead, the Illinois senator justified his actions and his authorship by noting that if senators, like himself, were able to make sound laws for governing whites, they surely could make suitable ones for blacks. "This is a favorite point of the author of the Nebraska bill," Douglass responded. He labeled as utter nonsense any inference that those who wished to suppress African American rights might be more concerned for the welfare of enslaved men and women than were those who fought for slavery's demise. "I brand it," concluded Douglass, "as a mean, wicked and bitter appeal to Popular Prejudice, against a people wholly defenseless."[23] For Douglass, only convoluted logic could be employed to use a concept that came from the Declaration of Independence to deny Africans of their liberty and suppress their will.[24] Douglass further alluded to the need for armed resistance to popular sovereignty in Kansas and Nebraska, arguing that a slave society required placing restrictions upon the post office, the pulpit, and the written and spoken word: "A free press and a free gospel are as hostile as fire and gunpowder—separation or explosion are the only alternatives."[25] Thus it was the Kansas-Nebraska Act that completed the process of turning Frederick Douglass from a reformer to a revolutionary.

Although the inferences to rebellion—fire, gunpowder, and explosion—are the only hints in Douglass's Kansas-Nebraska speech of his conviction that slavery, slave catchers, and the institution's expansion should be met with violence, his statements in other forums and his actions reveal Douglass's thoughts, particularly about Kansas and his friend John Brown. In September 1854, one month before traveling to Chicago to deliver his Kansas-Nebraska

lecture, Douglass published an editorial entitled "Our Plans for Making Kansas a Free State."[26] In this article Douglass argued that free African Americans should take up residence in Kansas to frustrate both Northern whites who wanted Kansas devoid of Africans, free or slave, and Southern whites who would hesitate to bring slavery into a region where free blacks could both assist and encourage escape or rebellion. The "our" in the title of Douglass's work referred to African Americans and to abolitionists generally, but also to John Brown, who at the time was settling five of his adult sons in Kansas in an attempt to outlobby and, if necessary, physically resist the adoption of racial exclusion and proslavery measures into Kansas law. For Douglass, the Kansas-Nebraska Act meant the inevitability of violence.

John Brown and Frederick Douglass

In addition to his own convictions about the need to fight slavery and racial discrimination, Frederick Douglass said that he was moved by John Brown's "strong impressions" from their first meeting in 1847. During that conversation, Douglass had listened to Brown's analysis of slavery as a "state of war" and had agreed with him. Douglass stayed with Brown briefly in 1847, and again in 1848, when Douglass's lectures brought him near Brown's residence in Springfield, Massachusetts. Douglass's impression of Brown was that he was a white man who felt about slavery as if he were a slave. Douglass would have known Brown founded his League of Gileadites in early 1851, a band of armed black men whose mission was to resist slave catchers and aid fugitives from slavery. While Douglass lectured against popular sovereignty in Illinois, he awaited news from Brown's contingent on the front lines in Kansas.[27]

Frederick Douglass and Brown corresponded about Kansas in September 1854, and later Douglass offered to raise money for the defense, presumably legal or physical, of abolitionists, free Africans, or fugitives who settled there. In 1855, Douglass and Brown spent several days together at a convention for the founding of the Radical Abolitionist Party, a platform for organizing

antislavery work through voting strength. Brown, however, asked the delegation for donations to purchase firearms. A few months later, when Douglass learned of Brown's Pottawatomie Creek killings of five proslavery men, Douglass called it "absurd" to label a man a murderer when he fought oppression and liberated men. Douglass believed it was "a terrible remedy for a terrible malady," and he went so far as to argue that no man who criticized Brown could be considered an abolitionist.[28]

Instead of shunning Brown after what was said to be a brutal slaughter, Douglass embraced him. He held John Brown up as praiseworthy for Brown's willingness to spill blood, and Douglass "drew sharp distinctions among his fellow anti-slavery activists," separating them into two groups—those who condemned violence and those who knew that abolitionists were engaged in a fight on moral, political, and physical fronts.[29] Douglass intensified his use of rhetorical threats throughout the 1850s, arguing that violence was the only way to stop slavery's westward spread, to prevent slave catcher excursions to the North, and to stamp out the hated institution.

Brown stayed with Douglass for three weeks during the winter of 1857. In fact, it was at Douglass's place in Rochester that Brown wrote the "Provisional Constitution and Ordinance for the People of the United States."[30] The quintessential revolutionary, Brown talked to his compatriot Douglass about his plans. From Douglass's home, Brown contacted leading African American abolitionists and freedom fighters, including Martin R. Delany, Henry Highland Garnet, and Harriet Tubman, to ask them to attend a convention in Chatham, Ontario, to ratify the new constitution. Douglass agreed to join forces with Brown in the latter's Subterranean Passage Way Plan, in which armed abolitionists would move into the South freeing enslaved Africans, arming them, and leading whole communities into the mountains while militarily defending the rear of their ranks from slave catchers.

With the acceptance of this strategy and implied support from Douglass and other African intelligentsia, Brown went about the work of collecting guns. Never a man of great financial means,

Brown found the work of stockpiling arms arduous. Apparently Brown felt that their goal of liberating captives and then defending them would only work if they acquired enough weapons. These could be taken from a federal arsenal in Virginia, and Brown divulged to his confidants his plan for attacking such an arms holding at Harpers Ferry, Virginia. Brown's supporters reacted. A number of black abolitionists responded that free Africans were not yet organized sufficiently to help sustain such an attack. Douglass agreed with the majority that blacks were not ready for open warfare on slavery, especially if it included attacking a federal armory. In the summer of 1859, Brown asked Douglass to meet with him privately at Chambersburg, Virginia, and he paid part of Douglass's fare, asking only that Douglass listen to his entire plan.[31] Members of Brown's family said later that Brown returned from the meeting claiming that Douglass was with them. However, although he supported the use of physical force to end slavery, Douglass did not wish to involve himself with a plot that he was convinced would be sure to provoke an offensive by the U.S. government.[32]

Although party to the overall plot from its outset, Douglass feigned surprise when, on October 18, 1859, word reached him that Brown and his troops had attacked Harpers Ferry. Hurrying from Philadelphia, where he had been lecturing, Douglass destroyed correspondence between himself and Brown and sailed to Great Britain by way of Canada. This was probably an indication that his papers would have proven his knowledge of and probable complicity in Brown's schemes. Although in support of violence as a means to end slavery and resist its agents, Douglass did not participate in Brown's last-minute change of plans because it appeared to him that Brown's latest strategy was not well thought out and had little chance of succeeding. A revolutionary, but not a religious zealot like Brown, Douglass was not as certain about the existence of an afterlife. Douglass wanted to succeed at revolt, not martyrdom. Twenty years later on the anniversary of Brown's raid, a wistful Douglass told an audience that John Brown had almost single-handedly begun the war that ended slavery.[33]

Douglass had grown bolder as the likelihood of Southern secession drew nearer, and antislavery spokesmen agitated "for disunion." One month after the election of Abraham Lincoln, Douglass wrote, "A dissolution of the union would be highly beneficial to the cause of liberty. . . . In truth, we really wish those brave, fire-eating, cotton-growing states would just now go outside the Union and set up for themselves, where they could be got at without disturbing other people." Douglass, the revolutionary, had reemerged, and he issued a threat or dare to slaveholding states. He now welcomed the fight, and regularly expressed his position that only violence would curb the Southern lust for slaves. He told his audience that he hoped for war.[34]

Conclusion

By the mid-1850s, Frederick Douglass would admit that moral suasion had failed to weaken slavery and that as a liberation strategy it was insufficient to the task. His radicalism increased with the passage of the Fugitive Slave Act of 1850, when he insisted that Africans had the right to use force in defense of their liberty. The eventual passage of the Kansas-Nebraska Act led Douglass to join with the revolutionary John Brown in planning the overthrow of slavery. These men hoped to inspire and lead massive escape and armed resistance by enslaved Africans.

A few months before the outbreak of the Civil War, Douglass summed up his sentiments on violence, which had been weighing on him for a decade. "If speech alone could have abolished slavery, the work would have been done long ago. What we want is anti-slavery government. . . . For this, the ballot is needed, and if this will not be heard or heeded, then the bullet."[35] *Dred Scott v. Sandford,* the Supreme Court decision of 1857 that denied Douglass and other free Africans U.S. citizenship, was an extension of the federal repression of African rights that had begun seven years earlier. Although a horrible development, to Douglass it was only another marker along the road toward war.[36] The radicalization of Frederick Douglass, the transformation of a pacifist reformer into a vocal—if cautious—revolutionary, resulted from

signals that non-slave-owning whites gave to the free African community. The Northern white majority had made it clear, through passage of the Fugitive Slave Act of 1850 and the Kansas-Nebraska Act of 1854, that they had no intention of living with freed black people as equals.

Notes

1. James H. Cook, "Fighting with Breath, Not Blows: Frederick Douglass and Anti-Slavery Violence," in John R. McKivigan and Stanley Harold, eds., *Antislavery Violence: Section, Racial, and Cultural Conflict in Antebellum America* (Knoxville: University of Tennessee Press, 1999), 13, 131. Douglass was accosted on numerous occasions for resisting segregation in public facilities and once with William Lloyd Garrison on the antislavery circuit.
2. Cook, "Fighting with Breath," 132; Waldo Martin, *The Mind of Frederick Douglass* (Chapel Hill: University of North Carolina Press, 1984), 60.
3. Robert C. Dick, *Black Protest Issues and Tactics* (Westport CT: Greenwood Press, 1974), 138–39; Cook, "Fighting with Breath," 154.
4. Benjamin Quarles, *Allies for Freedom: Blacks and John Brown* (New York: Oxford University Press), 67; David B. Chesebrough, *Frederick Douglass: Oratory from Slavery* (Westport CT: Greenwood Press, 1998), 157.
5. Dick, *Black Protest Issues*, 142, 68.
6. Dick, *Black Protest Issues*, 138; The Whig Party had acquiesced to the demands of its Southern wing, allowing the Fugitive Slave bill to be attached to Henry Clay's Compromise of 1850. See Frederick Douglass, "The Kansas-Nebraska Bill," speech at Chicago, October 30, 1854 in *Frederick Douglass' Papers*, November 24, 1854, reprinted in Philip S. Foner, ed., *Frederick Douglass: Selected Speeches and Writings* (Chicago: Lawrence Hill Books, 1999), 302–3.
7. Dick, *Black Protest Issues*, 149. See Darlene Clark Hine with William C. Hine and Stanley Harrold, *The African-American Odyssey*, 2 vols., 2nd ed. (Upper Saddle River NJ: Prentice Hall, 2000), 1:211. That Douglass's freedom had been purchased was well publicized in 1845. However, this fact would not necessarily preclude slave catchers from accosting him, members of his family, or the escaped Africans whom he and Mrs. Douglass sheltered at their home.
8. Hine, *Odyssey*, 212–13.
9. Dick, *Black Protest Issues*,143–44.
10. Dick, *Black Protest Issues*, 147–48.
11. Frederick Douglass, "The Fugitive Slave Law," speech to the National Free Soil Convention at Pittsburgh, August 11, 1852, in Foner, *Douglass*, 207–9.
12. Foner, *Douglass*, 208.
13. Hine, *Odyssey*, 215–16; Douglass, 281–82; Frederick Douglass, "Anthony Burns Returned to Slavery," in Foner, *Douglass*, 281–82.
14. Hine, *Odyssey*, 217; Dick, *Black Protest Issues*,143.

15. Hine, *Odyssey*, 217–18.
16. Frederick Douglass, "The Kansas-Nebraska Bill," speech at Chicago, October 30, 1854, in Foner, *Douglass*, 298–300. The Kansas-Nebraska Act passed in May, 1854.
17. Foner, *Douglass*, 300.
18. Foner, *Douglass*, 301, 303–4.
19. Foner, *Douglass*, 304–5.
20. Foner, *Douglass*, 305.
21. Foner, *Douglass*, 307.
22. Foner, *Douglass*, 307–8.
23. Foner, *Douglass*, 305, 307.
24. Foner, *Douglass*, 310. While the Nebraska bill was being debated in Congress, Stephen Douglas was "hung in effigy" in cities across the North, including Chicago, where Frederick Douglass was speaking.
25. Foner, *Douglass*, 301.
26. Quarles, *Allies for Freedom*, 31.
27. Cook, "Fighting with Breath," 138–39; Quarles, *Allies for Freedom*, 20–21; W. E. B. Du Bois, *John Brown* (New York: International Publishers, 1962), 12. Unlike most white abolitionists, John Brown rejected racial discrimination. The son of the abolitionist and Oberlin College trustee Owen Brown, he embraced African equality. The "Subterranean Passage Way" was the name of a section of the Underground Railroad running through Springfield, Massachusetts. For an in-depth explanation, see Quarles, *Allies for Freedom*, 16–18.
28. Quarles, *Allies for Freedom*, 30–33; Cook, "Fighting with Breath," 139–43.
29. Cook, "Fighting with Breath," 129.
30. Cook, "Fighting with Breath," 129; Quarles, *Allies for Freedom*, 39.
31. Quarles, *Allies for Freedom*, 39, 76–77; Cook, "Fighting with Breath," 138.
32. Quarles, *Allies for Freedom*, 78–79. See Cook, "Fighting with Breath," 129, 136, and 150, for alternative interpretations of Douglass's position on the use of violence. See also Dick, *Black Protest Issues*, 147, for a discussion of Douglass's use of revolutionary language as a political strategy.
33. Du Bois, *John Brown*, 353; Quarles, *Allies for Freedom*, 114.
34. Dick, *Black Protest Issues*, 152, 155.
35. Dick, *Black Protest Issues*, 146–47.
36. *Dred Scott v. Sandford*, 60 U.S. 393 (1857); Frederick Douglass, "The Dred Scott Decision: An Address Delivered, in Part, in New York, New York, in May 1857," in *The Frederick Douglass Papers*, ser. 1, vol. 3, 1855–63, ed. John W. Blassingame (New Haven: Yale University Press, 1985), 166. Douglass argued that the *Dred Scott* decision was a futile attempt by the "slaveholding wing" of the U.S. Supreme Court to curtail mounting opposition to slavery, in part by silencing the voices of African American abolitionists who would be put on the defensive by having to prove their free status and their customary rights as members of the Republic. It was to Douglass a desperate attempt

and one that was sure to fail and lead the country to war. "Step by step we have seen the slave power advancing; poisoning, corrupting, and perverting the institutions of the country. . . . The white man's liberty has been marked out for the same grave with the Black man's. The ballot box is desecrated, God's law set at nought, armed legislators stalk the halls of Congress, freedom of speech is beaten down. . . . Such a decision cannot stand." Blassingame, *Frederick Douglass Papers*, 168–69.

Chapter Seven

Unpopular Sovereignty

African American Resistance and Reactions to the Kansas-Nebraska Act

WALTER C. RUCKER

On May 1, 1854, Stephen Pembroke and two of his sons made a desperate attempt to escape from bondage. Setting out from the Baltimore plantation owned by Jacob Grove in the middle of the night, they managed to walk all the way to New York City. Although they eluded their pursuers during the course of a twenty-day trek, slave catchers seized Pembroke and his sons within days of their arrival on Manhattan Island. As he recounted later, "We were violently arrested, secured, and taken back to the South. I was treated in a bad manner here." To add to his torment, Pembroke was separated from his sons, both of whom were sold upon their return to Baltimore. During his confinement, Pembroke wrote a letter to his brother, the Rev. James W. C. Pennington, a prominent abolitionist, Presbyterian minister, and author of one of the first book-length treatments of African American history. Dated May 30, 1854, the letter was a formal request that the minister pay for his brother's freedom. He complied, and Pembroke joined Pennington in New York City the following month.[1]

Newly freed, Pembroke was immediately recruited by abolitionists eager to have African Americans with authentic slave experiences speak to Northern audiences. He joined a series of lecture tours, hoping to raise enough money so that he could return to

Baltimore to purchase the freedom of his five children. Speaking at the New York Tabernacle on July 18, 1854, Pembroke and Pennington—who had escaped from slavery in 1827—addressed a small audience regarding their personal experiences. After relating the horrors of bondage, Pembroke noted, "Such is the condition of Slavery; it is a hard substance, you cannot break it or pull it apart, and the only way is to escape from it. *I think it is the North that keeps up Slavery.*"[2]

Pembroke's poignant reference to Northern complicity with slavery came at a time when the nation experienced a convulsive debate surrounding passage of the Kansas-Nebraska Act on May 30, 1854. In a deal brokered by a Northern Democrat, the slaveowning interests of the South won an important victory in the effort to extend the boundaries of slavery. As a direct result of the fact that the Kansas-Nebraska Act could only be passed with Northern congressional support, many African American leaders and organizations agreed with Pembroke and took his statement to its logical conclusion: if slavery can only be resisted through escape, then the complicity of the North with the South meant that the best resistance to bondage was to leave the United States altogether. Thus, between passage of the Kansas-Nebraska Act and the start of the Civil War, the black emigrationist movement reached an apex. By supporting this movement, free African Americans expressed their collective misgivings about the federal government and the U.S. Constitution. With the growing influence of the so-called Slave Power, many African American leaders felt that true liberty would never be achieved in a land so fundamentally committed to bondage.

The passage of the Kansas-Nebraska Act significantly altered African American political views in the 1850s. The Fugitive Slave Act of 1850, the 1854 Kansas-Nebraska Act, and the 1857 *Dred Scott v. Sandford* decision effectively obscured the boundaries between free and slave states. With open and simultaneous calls for white popular sovereignty in the Western territories, abject white supremacy in the South, and forced black emigration in the North, African Americans witnessed a marked retreat from the

progressive and reform-oriented rhetoric of the 1830s. Lacking the right to vote and other privileges of citizenship, many feared that their condition would continue to be inconsequential in the eyes of the majority of whites in the United States. Moreover, the many political compromises between 1820 and 1854 extended the temporal and geographic scope of slavery, guaranteed a subordinate status for free blacks, and elevated white supremacy to the status of official federal governmental policy.

In this inhospitable environment, a definite shift occurred in the political agenda of many African American leaders and organizations. Certain leaders moved to support the use of violence as a viable means of resisting slavery. Given the publications of David Walker's *Appeal to the Slaves of the United States of America* in 1829 and Henry Highland Garnet's *Address* in 1843, this tactic was far from new. However, after the Kansas-Nebraska Act passed, African American masses more readily accepted calls for the use of force. In similar fashion, support for emigration and black nationalism increased almost exponentially among free blacks by the mid-to late 1850s. Both political trends clearly indicate the frustrations and dashed hopes of free African Americans. Therefore, by focusing on the Black Convention Movement in the 1840s and 1850s, this essay demonstrates how the concessions to the slaveholding South, embodied in congressional legislation, created a radical shift in black political discourse.

Free Black Hopes and Aspirations to 1850

Although the first free black communities emerged in seventeenth-century colonial Chesapeake, the "terrible transformation" of racialized slavery effectively rendered the freedom of all African Americans nominal at best. As historian Peter Wood aptly describes, this transformation, though gradual, created an almost permanent and insurmountable set of limitations on African Americans that lasted through the Civil War era (and beyond). By the 1660s, whites found ways to end or circumvent the earlier social ambiguity that allowed Anthony Johnson, born in west-central Africa and transported to the colony as an indentured servant

in 1621, to own 250 acres of land in Virginia, to hire his own dependent laborers, and to bequeath a significant amount of real estate to his two sons. Families like the Johnsons disappeared as white supremacy and race-based slavery moved forward almost unabated.[3]

After 1680, the long shadow cast by the slave plantation continually threatened free blacks and effectively closed many opportunities for social advancement. Even the egalitarian impulses of the American Revolution did not fully extend to them. Although many blacks fought for the cause of liberty and justice, few reaped direct benefits. Outside of African Americans, few saw the paradox inherent in the revolutionary rhetoric exposed by slave owners. The disappointments of this era were repeated several times throughout the nineteenth and twentieth centuries. Given the limitations of the American Revolution, African Americans did witness certain tangible victories. Notably, Northern states moved to end slavery legally. By 1830 slavery had been abolished throughout the region while it was becoming increasingly entrenched in the South.[4]

As the nation reconfigured itself after 1787, a series of political disputes and compromises between Northern and Southern interests had particular implications for free blacks and the continuation of slavery in the United States. As one of the most significant achievements of Thomas Jefferson's tenure as president, the Louisiana Purchase set the stage for a series of fierce political battles. Ironically, Jefferson had slave rebellions in the French Caribbean to thank for the acquisition of this sizable allotment of North American land. Losing one of the most lucrative colonies in the history of the Western Hemisphere as a result of the Saint-Domingue Revolution of 1791, France's Napoleon decided to sell this massive tract of land to the United States. A combination of black rebels and yellow fever conspired against Napoleon's design to restructure French imperial holdings in the Americas. Just months prior to the Louisiana Purchase, French forces capitulated to the armies commanded by Jean-Jacques Dessalines in the newly founded Republic of Haiti. Both the Louisiana Purchase

and the establishment of Haiti profoundly influenced dimensions of black political discourse in North America.[5]

More immediately, however, the Louisiana Purchase sparked a highly contentious debate among American lawmakers. Ever since the American Revolution and the ratification of the U.S. Constitution, a growing political divide on the issue of slavery had existed between the North and the South. By the time of the Louisiana Purchase, the 244-mile Mason-Dixon Line represented the emerging sectional boundary between slave and free states. Divided both politically and then physically due to the slavery debate, the nation faced a significant crisis in 1819 over the admission of Missouri into the Union.[6]

If allowed to enter as a slave state, Missouri's presence threatened to augment the growing influence of the South and slaveholding interests in the federal government. Indeed, through the 1820s, the South practically controlled all branches of the federal government. Only in the Senate did nonslaveholding interests have a foothold with an equal number of free and slave states, but the admission of Missouri as a slave state threatened this balance. This stranglehold on the federal government explains the abolitionist fear of the South as the Slave Power beginning in the 1830s.[7]

The Missouri Compromise of 1820 promised to limit the Northern expansion of slavery and to maintain some small semblance of equal political representation. The former was accomplished by the disjointed extension of the Mason-Dixon Line westward into the Louisiana Purchase territories. The 36°30′ line of latitude, established by the Missouri Compromise as an extended boundary between free and slave states, was intended by Congress to serve as an organizing principle for territories seeking to gain statehood. The 1820 Compromise banned slavery north of the "Compromise Line," with the exception of Missouri. All other states to be formed in the unorganized Louisiana Territory after 1821 were to abide by this demarcation. Also, as part of this Compromise, Maine entered the Union in 1821 as a free state, which provided the same number of free and slave states for the U.S. Senate.

The Missouri Compromise, however, threatened the status of

free blacks throughout the country. Not only did the proposed Missouri state constitution allow for slavery but it also prohibited free blacks from settling in the new state. Submitted for approval to Congress in November 1820 and subsequently approved, this state constitution attacked fundamental rights granted to citizens by the federal government. Finding precedent for this was no difficult feat for Missouri legislators. A number of state constitutions and statutes limited the citizenship rights of free blacks. For example, most states denied them the right to vote, banned them from testifying in court cases involving whites, and prevented them from joining militia units. One Northern state, Pennsylvania, moved to prohibit free black immigration.[8]

The Missouri Constitution proved the limits of the American Revolution. While the spirit of this era led many in the North to question the morality and efficacy of human bondage, racism and racial discrimination continued unabated. Neither the federal government nor state governments saw fit to grant African Americans the privileges of citizenship, and throughout the first half of the nineteenth century, things progressively worsened. The circumscribed space carved out for free blacks made it clear that even in the absence of slave status, blackness carried with it a number of troublesome burdens. By 1850, for example, state legislators continued to deny free blacks any semblance of citizenship rights: many states passed laws that prohibited their free movement within or between states; rampant discrimination in hiring, education, transportation, and public facilities prevented even a modicum of access and opportunity; and most states still denied blacks the right to vote or hold political office. The fact that these practices extended into the North proved to many that racism knew no bounds and that true liberty might never be achieved in the United States.[9]

Popular Sovereignty, the Kansas-Nebraska Act, and the Kansas War

After 1845, more territorial acquisitions threatened once again to disrupt the delicate political equilibrium between the North and

the South as well as the status of free blacks. The annexation of Texas and Oregon, in addition to the close of the American-Mexican War, provoked sectional concerns about the newly acquired territory. The 1848 Treaty of Guadalupe-Hidalgo partly sated the expansionist ambitions of President James K. Polk, who actually wanted more than the New Mexico and California territories ceded to the United States. In any event, the question of whether slavery should be allowed to expand into the Southwest was almost immediately raised in Congress, leading to another political compromise between the North and the South. Logically, the most effective measure for mediating the dispute over the boundary between free and slave states would be to extend the Missouri Compromise line all the way to the Pacific Coast of California. After 1848, however, this was an untenable solution due to two unrelated developments—the rise of the Free Soil Party and the doctrine of states' rights/popular sovereignty.

The Free Soil Party formed in the North in 1848. This new political voice expressed the concerns of white labor being increasingly displaced by the torrent of European immigration in the Northeast during the 1830s and 1840s. Pushed out of manufacturing jobs due to hiring practices that greatly favored lower paid European workers, native-born white workers mobilized politically and joined or created nativist political parties. While they opposed European immigration to protect the Northern labor market, other white workers in the North saw the newly acquired lands to the West as their opportunity to forge new lives. In an ironic adaptation of the Jeffersonian concept of "Republican Virtue," Northern white workers who helped form and mobilize the Free Soil Party wanted to prevent the expansion of slavery into the West so that they could potentially move to these territories and become yeomen farmers. They indeed wanted "free soil"—land free of slavery and, in many cases, land free of African Americans altogether. Before 1857, the majority of Free Soilers had few concerns about slaves or their plight. Instead, they were keenly aware that in Southern slave society, essentially two classes of whites existed: the propertied few and the impoverished many.

The very existence of slavery degraded the status of nonslaveholders and placed severe limitations on the possibility of upward social mobility. In this regard, Free Soilers and other nativist allies could ultimately agree on their reasons for political activism. Whether the threats came from European immigrants or the institution of slavery, Northern workers were more than ready to employ fiery rhetoric and militant action in order to protect their jobs, their chances for social mobility, and their autonomy. By 1854, these two Northern constituencies—nativists and Free Soilers—merged, providing a base upon which the new Republican Party would rest.

Given this context, many Northerners opposed, on principle, the extension of the 1820 Missouri Compromise line to California. Ironically, many Southerners joined this opposition, but for radically different reasons. As an extension of the states' rights doctrine, Southern politicians argued against congressional intervention on the issue of slavery in the new territories, opting instead to allow settlers to vote on whether to be a free or slave state. Far from a novel concept, the right to vote on a significant issue, or popular sovereignty, was one of many classical liberal concepts fundamental to the American system of government. However, when evoked in the context of slavery and Western expansion, popular sovereignty represents an unadulterated version of white supremacy. While the political franchise had experienced continuing expansion since the 1820s, white elite men still monopolized American politics in the 1840s. Like the related doctrine emphasizing states' rights, popular sovereignty meant that citizens, not the federal government, had the right to determine the laws of territories and states. In any event, both concepts euphemistically represented slavery, white supremacy, and the interests of the propertied class of the South.[10]

The Compromise of 1850 sought to resolve the sectional strife resulting from the American-Mexican War. Based largely on proposals forwarded by Kentucky congressman Henry Clay, the Compromise averted a major crisis, although in many ways it only set the stage for the bloodiest war in American history. Under its pro-

visions, California would be admitted as a free state; slave trade in Washington DC, was prohibited; both Utah and New Mexico were to be organized as territories without federal restrictions on slavery; and as a measure to satisfy Southern slave owners, a stringent and draconian fugitive slave law was enacted. Out of the intense congressional debates leading up to the Compromise emerged Stephen A. Douglas. He single-handedly divided the Compromise into several pieces, gathered a majority for each individual part from various constituencies to allow their passage, and ultimately ended congressional deadlock.[11]

His signal achievement came at a cost. The Illinois Democrat may have managed to usher the Compromise through Congress—avoiding perhaps a more immediate war between the states—but he made important and dangerous concessions to the burgeoning Slave Power. By supporting the Fugitive Slave Act of 1850, Douglas obscured the line between slave and free states. After its passage, the federal government assumed a new responsibility—that of slave catching. Although Southern aristocrats normally opposed the extension of federal power, this was one arena in which they applauded the ability of the U.S. government to force its will on the states. The Fugitive Slave Act stipulated the creation of federal commissioners who would hear the cases of claimants seeking to capture escaped slaves. Alleged fugitive slaves had the burden of proof to show they were not slaves in these cases, but very few could afford legal representation. Untold scores were arrested under false pretense and sent into Southern bondage. Moreover, the act required U.S. marshals and deputies to assist slave owners in the capture of escaped slaves. Marshals were even empowered to deputize citizens of Northern states in this enterprise. Just as Stephen Pembroke mentioned in his July 1854 speech, the North was indeed complicit with the Slave Power, and the Fugitive Slave Act was the first of many steps which proved this point to thousands of African Americans.[12]

African Americans immediately reacted to the act with an estimated 3,000 crossing the border to Canada between October and December 1850. By December 31, 1860, between 15,000

and 20,000 had crossed the border, increasing the black population of Canada to roughly 60,000. Canada replaced the North as the new "promised land," and the Fugitive Slave Act forced a necessary reorientation of the Underground Railroad. In order to protect their new status, many escaped slaves left the United States, fearing recapture and return to bondage. Even African Americans born free left in droves under the presumption that whites would make false claims in an attempt to profit from the Fugitive Slave Act.[13]

Although this act had obvious implications for free and enslaved African Americans, the most dangerous concession made by the North, and Stephen Douglas in particular, in the 1850 Compromise was authorizing the concept of popular sovereignty. It did prove to be a useful middle ground between Northern demands for congressional exclusion of slavery in the territories and Southern insistence on federal government noninterference with slavery in New Mexico and Utah. However, popular sovereignty made available to the residents of New Mexico and Utah territories opened the door to all sorts of unforeseen problems, including the allowance for the Compromise line of 1820 to be, in effect, abrogated. Clearly, the road to the Kansas-Nebraska Act was paved in 1850, and Stephen Douglas served as the chief architect of both enterprises.[14]

Senator Douglas brokered the Kansas-Nebraska Act for a variety of reasons. Principal among them were his desire to see construction of a transcontinental railroad begin, his designs on the presidency, and his naiveté regarding the extreme volatility of the slavery debate. As historian James McPherson notes, the 1854 Kansas-Nebraska Act "may have been the most important single event pushing the nation toward civil war."[15] Douglas had managed to navigate the partisan and sectional divides during congressional discussions leading up to passage of the Compromise of 1850. In 1854, this tactic utterly destroyed one political party, splintered another along sectional lines, greatly bolstered the political sway of the so-called Slave Power, and set the nation on a direct path toward war.[16]

Using popular sovereignty as the solution to partisan and sectional strife, Douglas sponsored the Nebraska bill in January 1854 as part of a larger plan to encourage settlement in the Nebraska and Kansas territories. The most controversial element of this proposal was the repeal of the 1820 Missouri Compromise. Douglas felt that eliminating the Compromise line and allowing slavery into territories previously declared free would help populate the region. Of course, this was also part of a larger design. In addition to being a congressman and a former justice of the Illinois Supreme Court, Douglas was a major investor in Chicago real estate. In 1850, he had secured a land grant from the federal government for the Illinois Central Railroad linking Chicago to Mobile, Alabama. The resulting increase in the value of his Chicago real estate netted Douglas a small fortune. The possibility of building a railroad between Chicago and San Francisco promised to produce an even greater increase in his property values. To do so, however, required the support of Southern proslavery Democrats seeking to expand slavery into previously prohibited areas. Likewise, if he hoped to receive the Democratic Party nomination for the presidency, Douglas needed strong support from the South. Thus the successful repeal of the Missouri Compromise promised to satisfy potential proslavery constituents in the South.[17]

Douglas offered popular sovereignty as a concession to the South so that his self-interested plan to increase the value of his property could advance undeterred. The Nebraska bill would allow settlers in this territory to decide on the issue of slavery by voting. Douglas proved a bit naïve in making this concession. He assumed that the topography and climate in the Great Plains would not be conducive to cash crop cultivation. In turn, he believed that few slave owners would venture into the territory and that more free states than slave states would evolve in the Louisiana Purchase lands. He underestimated the will of the slave-owning aristocracy that favored expansion, and by blurring the boundaries between free and slave states Douglas increased the fears of the Slave Power as voiced by Free Soilers and African Americans.[18]

The Kansas-Nebraska Act passed on May 30, 1854. Reactions

against it were immediate. Because the congressional vote followed sectional as opposed to partisan lines, the act caused the complete collapse of the Whig Party as its Southern members defected and joined their counterparts in the Democratic Party. Workers throughout the North held rallies to oppose the act. While they still distanced themselves from radical abolitionism, as historian Robert Fogel notes, "They nevertheless began to adopt the language and imagery of the abolitionists." On the eve of congressional elections in 1854, ex-Whigs, antislavery Democrats, Free Soilers, and abolitionists voiced their collective opposition to the Slave Power through the formation of the Republican Party. As Abraham Lincoln noted in an October 16, 1854, speech, "Let no one be deceived. The spirit of seventy-six and the spirit of Nebraska, are utter antagonisms; and the former is being rapidly displaced by the latter. . . . Near eighty years ago we began declaring that all men are created equal; but now from that beginning we have run down to the other declaration, that for some men to enslave others is a 'sacred right of self-government.'" In Lincoln's assessment, liberty lost ground to bondage as a direct result of the 1854 act. Far from being representative of a classical liberal doctrine, popular sovereignty as articulated by Douglas and his allies was a clear and conscious acquiescence to white supremacy, slavery, and the aristocracy of the American South.[19]

While historians are left to ponder why Douglas offered such a sizable concession to Southern aristocrats, the Kansas-Nebraska Act can be measured as a resounding victory for the Slave Power. This fact was not lost on the scores of slave owners pouring over the Missouri border into Kansas two months before the passage of the 1854 act in order to secure prime land for cash crop cultivation. Nor was it lost on the thousands of Free Soilers who became radicalized to the point that they not only opposed the westward expansions of slavery but also began militantly to oppose the institution of slavery itself. Moreover, this concession demonstrated to free blacks that no section of the United States could serve as a true haven for liberty.[20] The result of this convergence of forces was guerilla warfare in Kansas, the emergence of militant Free

Soilers and abolitionists who favored the use of violence, and an increasingly radicalized agenda among black leaders and organizations.

The Origins of Black Power: Black Political Discourse after 1854

While Free Soilers and slave owners fought in 1856 over Kansas in what some historians consider the opening battles of the Civil War, free blacks were caught between two hostile forces. Slave owners had long expressed their disdain for free blacks and saw them as instigators of slave unrest. Likewise, the Free Soilers sent to defend Kansas by the New England Emigrant Aid Company expressed as much, if not more, antipathy regarding the presence of all African Americans—free or enslaved—in the disputed territory. In fact, the very platform of the Free State Party in Kansas rested, in part, on the exclusion of all African Americans from the region contingent on Free Soil victory in state elections. Clearly, the winners of this contested space would not be African Americans.[21]

The radicalization of black political discourse can be traced through the National Convention of Colored Citizens, which became the principal forum for black abolitionists beginning in the 1830s. These conventions were often fertile battlegrounds between competing agendas among black intellectuals and, in many ways, laid the foundations for the various dimensions of black political discourse into the twentieth century and beyond. Each decade between the 1830s and the 1850s reflected a new set of concerns raised at these conventions. As historians Jane and William Pease demonstrate: "During the 1830s, the dominant theme of the conventions was total assimilation into a predominantly white society. In the 1840s, convention leaders challenged the dignity and utility of action so dependent on whites and established a system of distinctive black priorities to be achieved by exclusive action, shifting the emphasis thereby from interracial action for assimilation to self-conscious pressure on the white power structure. Finally, in the 1850s, the focus moved to black nationalism and emigration outside the United States—to the Caribbean, South America, and ultimately to Africa."[22] During each decade, indeed

even at each individual convention, a set of dichotomies—assimilation versus "Colored Nationality," moral suasion versus the use of violence, and calls for full citizenship versus emigration—became representative of the shifting fault lines within black leadership. These debates extended well beyond the National Convention of Colored Citizens and shaped the collective psyche of free blacks in the decades leading up to the Civil War.

Perhaps the most volatile of all debates was the issue of violence for the abolitionist cause. In this regard, the resolution adopted by the spring 1854 National Black Convention held in Philadelphia declared, "Those who, without crime, are outlawed by any Government can owe no allegiance to its enactments;—that we advise all oppressed to adopt the motto, 'Liberty or Death.'" This resolution advocating violence in the cause of freedom passed without debate. This action was unprecedented in the history of the National Black Convention Movement. The firestorm caused by Henry Highland Garnet's address at the 1843 Buffalo Convention, for example, typified many black abolitionists' reactions to those advocating violence. In the course of his address, Garnet demanded, "Brethren, arise, arise! Strike for your lives and liberties. . . . Let your motto be resistance! *Resistance!* RESISTANCE! No oppressed people have ever secured their liberty without resistance." Frederick Douglass and many others complained to the resolutions committee of the convention that there was "too much physical force" in the content of Garnet's speech. The Buffalo Convention voted, created a revision committee, voted again, and finally decided to suppress Garnet's address. The final vote on this issue was 19-9 against endorsing the controversial address. Clearly, in 1843 most African American abolitionists were unwilling to give up on peaceful solutions to the issue of slavery.[23]

This pattern continued at subsequent conventions. At the next National Black Convention held at Troy, New York, in 1847, Garnet repeated key elements of his *Address.* Again, Frederick Douglass and other loyal Garrisonians quashed his provocative ideas. In fact, the convention sponsored a resolution carefully worded by Douglass that stated, "Resolved, that our only hope for peace-

ful emancipation in this land is based on the firm, devoted and unceasing assertion of our rights and a full, free and determined exposure of our multiplied wrongs." Thus moral suasion and continued peaceful political agitation were to Garrisonians the only means to contest the institution of slavery. At local abolitionist conventions held in Boston; Portland, Maine, Detroit, and Oberlin, Ohio, other African American leaders raised the issue of the justifiable use of violence to end slavery only to be contested by followers of William Lloyd Garrison and the many advocates of pacifism and moral suasion.[24]

The first real step toward a more radical discourse occurred in Columbus, Ohio, in 1849. At a statewide abolitionist convention, a resolution passed that authorized the distribution of five hundred copies of David Walker's *Appeal* and Garnet's 1843 address—the two most militant works written by black abolitionists. While the distribution of writings sanctioning violence as a viable antislavery tactic represented a definite change in the political discourse of abolition, not one National Black Convention meeting adopted a resolution openly advocating force before the 1854 Philadelphia Convention.[25]

A number of factors may explain the growing embrace of violence among black abolitionists. Congressional legislation, Supreme Court rulings, and other federal government concessions to slavery had proven that moral suasion, by itself, did little to deter slaveholders and Northern advocates of compromise. With that said, even white pacifists in the abolitionist movement increasingly advocated violence after 1854, especially with the onset of the Kansas War. Ministers like Henry Ward Beecher of New York sent rifles to the disputed Kansas Territory to aid Free Soilers in their struggle against the Slave Power. Between passage of the Kansas-Nebraska Act and the beginning of the Kansas War, Harriet Beecher Stowe began writing her second antislavery novel. The 1856 novel, *Dred: A Tale of the Great Dismal Swamp,* was inspired by Nat Turner's revolt and suggested violence as a viable means of ending slavery. Finally New York abolitionist Gerrit Smith changed his stance on violence in direct relation to the

Kansas War: "I have opposed the bloody abolition of slavery. But now, when it begins to march its conquering bands into the Free States, I and ten thousand other peace men are not only ready to have it repulsed with violence, but pursued even unto death, with violence."[26]

Even Frederick Douglass, ardent supporter of moral suasion and pacifism, moved closer to the militant statements of Henry Highland Garnet and David Walker during and after 1854. In a May 26, 1854, editorial written shortly before passage of the Kansas-Nebraska Act, Douglass poignantly critiqued "the hell-black scheme for extending slavery over Nebraska," which went against the aims and wishes of Free Soilers, African Americans, Christian ministers, abolitionists, and representatives of both political parties. Douglass seemingly predicted the rise of the Republican Party and the violence of the Kansas War: "The time for action has come. While a grand political party is forming, let companies of emigrants from the free States be collected together. . . . Let them be sent out to possess the goodly land, to which, by a law of Heaven and a law of man, they are justly entitled." He also called for "all compromises with slavery ended" and the creation of "only a free party, and a slave party" to eventually raise armies and do battle.[27]

One week later, Douglass wrote an editorial entitled "Is It Right and Wise to Kill a Kidnapper?" This piece represented a radical departure from pacifism and moral suasion on his part. The question related specifically to the slaying in Boston of James Batchelder, a U.S. marshal seeking to return fugitive slave Anthony Burns to his master in Richmond, Virginia. Once news of Burns's plight reached abolitionists, they attacked the courthouse, and Batchelder was shot in the resulting melee. Douglass argued that the highest crime was not the "murder" of a kidnapper but the very idea that a free man could again be reduced to the condition of a slave. To this end, he contended "[t]hat submission on the part of the slave, has ceased to be a virtue. . . . Every slave-hunter who meets a bloody death in his infernal business is an argument in favor of the manhood of our race. Resistance is, therefore, wise as well as just."[28]

Sixteen-year-old Charlotte Forten Grimké echoed Douglass's views on the Burns case. After a dinner with Douglass and William Lloyd Garrison on May 31, 1854, she noted in her diary, "[Douglass] spoke beautifully in support of the non-resistant principles to which he has kept firm; his is indeed the very highest Christian spirit, to which I cannot hope to reach, however, for I believe in resistance to tyrants, and would fight for liberty until death." This precocious young woman would later express disappointment when Burns was finally returned to the South. To Grimké, this situation disgraced Massachusetts and "again has showed her submissions to the Slave Power."[29]

Douglass's September 1854 editorial, "Making Kansas a Free State," proves that he vacillated at times on the issue of violence. In his proposal for a peaceful solution to determining the status of Kansas, Douglass wanted a large body of free blacks to move to the disputed territory. "Even the infamous Nebraska bill, mischievous in all its parts and particulars," could not stop this migration in his view, and this solution was considered by Douglass to be better than the various emigration schemes to Liberia, the West Indies, or Central and South America suggested by other abolitionists. In this regard, Douglass claimed that Kansas free black migration might prevent slaveholders from settling in the region. They "would shun it, as if it were infested by famine, pestilence, and earthquakes," mainly due to the fear slaveholders had of the free black influence on their chattel property.

Douglass also saw the possibility of the black vote in Kansas that could potentially subvert the designs of Southern advocates of popular sovereignty. While the Kansas-Nebraska Act attempted to limit the vote to white men, it did not explicitly deny black men the vote. In this case, significant free black migration to Kansas could result in black suffrage and the creation of an antislavery state constitution without bloodshed. With or without the vote, Douglass stated that "their presence in the territory would, of itself, form a powerful barrier to the inflowing of a large slave and slaveholding population."[30]

In a November 1854 speech focused entirely on the act and its

immediate aftermath, Douglass pointed to violence as a solution to the onward march of slave interests. This speech, delivered at Chicago's Metropolitan Hall, detailed historical events from the annexation of Texas to the Kansas-Nebraska Act. In this sustained assessment of the Kansas-Nebraska Act, Douglass noted, "The only seeming concession to the idea of popular sovereignty in this bill is authority to enslave men, and to concede that authority is a hell black denial of popular sovereignty itself." He poignantly demonstrated that white supremacy, not the right to vote, was the real heart of the Kansas-Nebraska controversy. The decidedly frustrated tone of this speech, punctuated by an acerbic critique of Senator Stephen Douglas, represented a departure from Douglass's milder public pronouncements. He fell short of calling for violence in this speech, but Douglass did warn that the advocates of "Popular Prejudice" and compromise measures would eventually face a wrathful God "who has promised to overrule the wickedness of men for His own glory." While Douglass at this time did not openly embrace the use of violence, after 1854 he moved progressively toward direct action in his political views.[31]

A clear example of this radicalization came in an 1855 speech in which Douglass, still clinging to the possibility of moral suasion, contended that violence might be the only path: "We yet feel that its peaceful annihilation is almost hopeless . . . and contend that the slave's right to revolt is perfect, and only wants the occurrence of favorable circumstances to become a duty. . . . We cannot but shudder as we call to mind the horrors that have marked servile insurrections—we would avert them if we could; but shall the millions forever submit to robbery, to ignorance, and every unnamed evil which an irresponsible tyrant can devise, because the overthrow of that tyrant would be productive of horrors? We say not. The recoil, when it comes, will be in exact proportion to the wrongs inflicted; terrible as it will be, we accept and hope for it."[32]

Given his staunch opposition to Henry Highland Garnet's address during the 1843 Buffalo Convention and to others who advocated the use of force, some of Douglass's post-1854 pronouncements seem remarkable. Even more striking would be

his close association with John Brown, the man who led the raid on Harpers Ferry with the hope of establishing an independent black state in Appalachia.[33]

The Black Emigration Movement and the Haitian Exodus

At the same time that armed opposition to slavery became more acceptable even among mainstream black leaders, the emigration movement began to pick up enormous momentum. At the first National Emigration Convention held in August 1854 in Cleveland, H. Ford Douglas noted: "I owe it [the United States] no allegiance because it refuses to protect me. . . . I can hate this government without being disloyal, because it has stricken down my manhood and treated me as a saleable commodity. I can join a foreign enemy and fight against it, without being a traitor, because it treats me as an ALIEN and a STRANGER, and I am free to avow that should such contingency arise I should not hesitate to take any advantage in order to procure indemnity for the future." Douglas went on to encourage African Americans to emigrate as a means of securing the sort of freedom denied them in the United States. His advocacy of emigration was a direct response to passage of the Kansas-Nebraska Act, which served as a symbol of America's continuing commitment to slavery.[34]

Well before the 1854 National Emigration Convention in Cleveland, the concept of emigration had been voiced by a number of African Americans: Prince Hall in the 1780s; Paul Cuffee and James Forten in the 1810s; John Russwurm and Denmark Vesey in the 1820s; and Henry Bibb, Henry Highland Garnet, and Alexander Crummell in the 1830s and 1840s. However, as historian Richard Blackett notes, "Emigrationism as a viable political alternative to the conventional approaches of the abolitionists came to fruition in the calling of the National Emigration Convention in Cleveland in August 1854." Indeed, the mid-1850s witnessed a marked increase in the support of this movement, and there is little doubt that the tumult surrounding the Kansas-Nebraska Act was a contributing factor.[35]

The Cleveland Convention called by Martin Delany, a physician

and newspaper editor, was restricted to emigrationists supporting removal to regions in the Western Hemisphere only—Canada, the West Indies, or Central and South America. Mainly due to the automatic association many African Americans made between emigration to Africa and the work of the American Colonization Society (ACS), Delany saw the Americas as the only choice. In his 1852 book, *The Condition, Elevation, Emigration, and Destiny of the Colored People of the United States*, Delany considered Liberia—the crowning achievement of the ACS—a "poor miserable mockery—a burlesque on government . . . a mere dependency of southern slaveholders." On this issue, emigrationists had to walk a fine line. While they steadfastly supported the flight of African Americans to a more hospitable locale, they did not want to be seen as supporting the racist designs of white politicians who wanted to rid America of all free blacks. So while the 1850s represented an apex in black support for emigration, almost all of the focus of the movement centered on regions other than Africa.[36]

Another factor determining the site of proposed emigration was the death of Henry Bibb in 1854. A fugitive slave, abolitionist, and newspaper editor, Bibb championed emigration to Canada with some degree of success. After a successful escape from bondage in 1842, he became involved in the abolitionist movement and published an antislavery narrative in 1849. With the passage of the 1850 Fugitive Slave Act, however, Bibb and his wife fled to Canada, where he published *Voice of the Fugitive,* an abolitionist and emigrationist bimonthly. In the first edition of the paper, issued on January 1, 1851, Bibb promised, "We shall also persuade, as far as it may be practicable, every oppressed person of color in the United States to settle in Canada, where laws make no distinction among men based on complection, and upon whose soil 'no slave can breathe.'" To this end, he established a mutual aid society in Chatham, a small settlement across the river from Detroit, which assisted newly arriving black emigrants. Thousands joined Bibb in Canada in what might be considered the most successful black emigration movement in the history of North America.[37]

With Bibb's death at age thirty-nine on the eve of the 1854

Cleveland Emigration Convention, Delany's insistence on Caribbean and Central or South American emigration won the support of an increasing number of black activists. Instead of being a site for emigrant communities, Delany envisioned Canada as merely a way station or temporary haven for African Americans en route to their permanent homes in the Caribbean. As the principal organizer of the convention and author of its official resolution, Delany essentially assumed the title of "leader" of the emigrationist cause. In his resolution, entitled "The Political Destiny of the Colored Race," Delany stated the rationale for emigration, which included the fact that after more than two hundred years of existence in North America, blacks had been denied citizenship, equal rights, or safe haven from slavery. He identified the 1850 Fugitive Slave Act and the "nefarious" Nebraska bill as measures that further eroded the limited freedoms of African Americans. In his estimation, the Kansas-Nebraska Act was "based upon this very boasted American policy of the states' rights principle" and passed through Congress "without a murmur from the people." Delany also noted that the "Nebraska bill disrespect[ed] the feelings and infringe[d] upon the political rights of Northern *white* people," but its adoption still occurred. With this in mind, Delany concluded "[t]hat, then, which is left for us to do, is to *secure* our liberty; a position which shall fully *warrant* us against the *liability* of such monstrous political crusades and riotous invasions of our rights."[38]

In addition to Delany, another vocal leader of the emigrationist movement was James Monroe Whitfield. A protest poet and barber by trade, Whitfield focused most of his energies on the emigration movement between 1854 and 1862. Indeed, he and Frederick Douglass had a series of heated debates about the necessity of emigration. In one specific letter, published in Douglass's *North Star*, Whitfield notes, "The American government, the American churches, and the American people, are all engaged in one great conspiracy to crush us." Appeals to loyalty and patience by Douglass, William J. Watkins, and others did not alter Whitfield's conviction that free blacks would always occupy a circumscribed

space in the United States. He had "no faith left in the justice of this country" and hoped to establish a number of black-controlled colonies in the Caribbean and South America that could combine to "strike an effective blow against the common foe."[39]

At the conclusion of the Cleveland Convention, delegates developed an eight-point proposal for Haitian emigration based largely on a similar plan created by Haitian president Jean Pierre Boyer in 1824. This proposal included land allotments and private homesteads; guarantees of Haitian citizenship; an exemption from military service for seven years; government subsidies to support private businesses; religious freedom; and tariff exemptions for the importation of tools and personal goods. Haitian government officials, and particularly Emperor Faustin I, were not very receptive to this plan despite the government's previous support for African American emigration. Despite numerous overtures, Faustin I did not approve the favorable immigration terms and did not support government subsidies for African American businesses. One major difference between Boyer's 1824 plan and the proposal crafted by the 1854 Cleveland Convention was that African Americans were much more willing to support the latter. This may have served partly to negate the ambivalence voiced by Haitian government officials. To further advocate Haitian emigration, members of the Cleveland Convention created the Afric-American Printing Company in 1857 and published the *Afric-American Repository*, edited by James Whitfield, to generate funds and support.[40]

Although many African Americans did leave to establish communities in Haiti, the lack of support from the Haitian government eventually forced Delany and others to explore alternative emigration sites in Central and South America. Thousands did settle in Haiti, but by 1862 the venture was considered an utter failure. Either way, the dashed hopes and aspirations of African Americans, epitomized by the passage of the 1854 Kansas-Nebraska Act, played decisive roles in this growing support for the emigrationist movement.[41]

Conclusion

The year 1854 held a certain symbolic importance in the minds of African Americans. The Kansas-Nebraska Act passed that year, but 1854 also represented the fiftieth anniversary of the creation of the Haitian Republic. African American leaders fully understood the historical importance of the latter. Founded on January 1, 1804, Haiti epitomized the convergence of two concepts being debated in the United States by the mid-1850s: the violent overthrow of a slave regime and black nationalism as salvation. Saint-Domingue rebels had driven their French masters into the sea, defeated three European armies, established an independent republic, and in 1821 ended slavery in Spanish Santo Domingo. Moreover, Haiti, as the first and only black republic in the Americas, represented a sanctuary for those seeking to escape the Slave Power in North America.

James T. Holly—an African American shoemaker, abolitionist, and emigrationist—understood the promise of Haiti. Holly attended the Cleveland Emigration Convention in 1854 and signed the official resolution written by Martin Delany. In a speech delivered shortly after his return from a Haitian expedition in the fall of 1855, Holly noted, "If one powerful and civilized Negro sovereignty can be developed to the summit of national grandeur in the West Indies . . . , this fact will solve all questions respecting the Negro, whether they be those of slavery, prejudice or proscription."[42] This echoed the views of James Whitfield, who wanted to create a powerful set of black nations. Through these examples of self-government, self-sufficiency, and strength, successful black nations provided what Whitfield referred to as "ocular proof" of not just equality but also the "physical, moral, and mental" superiority of African Americans.[43] With this in mind, both Holly and Whitfield focused on Haitian emigration for both real and symbolic reasons.

Indeed, Haiti and Toussaint L'Ouverture held as much meaning for African Americans as the American Revolution and Thomas Jefferson held for whites. In the South, enslaved African Americans drew upon the example of the Haitian Revolution as inspi-

ration in a number of plots and rebellions between the 1790s and the 1820s. Gabriel Prosser, Charles Deslondes, and Denmark Vesey—in Virginia, Louisiana, and South Carolina, respectively—evoked the specter of Haiti to encourage slave rebels in separate undertakings.[44] In the North, the importance of Haiti grew in the consciousness of African Americans only after passage of the Kansas-Nebraska Act. In an 1857 declaration, Holly claimed that the Haitian Revolution was "one of the noblest, grandest, and most justifiable outbursts against tyrannical oppression" and concluded that this movement was more "wonderous [*sic*] and momentous" than the American Revolution. Joining Holly in his admiration for the Haitian triumph, an anonymous writer for the *Anglo-African Magazine* noted that the very image of L'Ouverture epitomized "in all its scope and strength the inimitable document, the Declaration of Independence."[45]

The hold of Haiti and L'Ouverture on the imagination and political consciousness of African Americans continued unabated throughout the 1850s. In an era in which black inferiority was an uncontested truism in the minds of most whites, Northern African Americans continued to cite the Revolution and the example of L'Ouverture as proof to the contrary. As Holly stated in an 1857 speech, the establishment and maintenance of the Haitian Republic "presents us with the strongest evidence and the most irrefragable proof of the equality of the Negro race." As a source of pride and a symbol of liberty, Haiti represents, in many ways, the origins of the Pan-African movement.[46]

If the Haitian Revolution provided the seeds for the eventual development of Pan-Africanism, then the Kansas-Nebraska Act provided the fertile soil in which this radical movement continued to grow. At the insistence of men like James T. Holly, James Whitfield, Prince Saunders, and Martin Delany, some 3,000 African Americans left the United States between 1855 and 1861 to establish their own communities in Haiti. Haitian emigration had a dual purpose. On one hand, it offered an expedient solution to those seeking to protect their liberty. On the other, Holly and others wanted African American emigrants to help strengthen Haiti's

positioning in the Western Hemisphere and world affairs. If the withdrawal of thousands of African Americans to Haiti could have the effect of making the troubled republic stronger, then Haiti could contest the continuing degradation of Africans and their descendants worldwide.[47]

Even Frederick Douglass flirted, albeit briefly, with the idea of Haitian emigration between November 1860 and May 1861. He had initially agreed to visit Haiti at the behest of its government, and he wrote in a May 1861 editorial, "We propose to act in view of the settled fact that many of them [African Americans] are already resolved to look for homes beyond the boundaries of the United States, and that most of their minds are turned towards Haiti." Douglass had consistently opposed the emigrationist movement for more than thirteen years prior to this editorial. The events of April 1861, however, almost prevented these ideas from reaching public view. With the onset of the Civil War, the promise of emancipation and liberty clearly overshadowed the immediate need to emigrate to more hospitable locales. As the first shells fell on Fort Sumter, Douglass noted in an addendum to his original, more supportive editorial, "This is no time for us to leave the country. . . . We shall stay here and watch the current of events."[48]

James Monroe Whitfield, longtime emigrationist and radical poet, also shifted his interests with the onset of the Civil War. Although he had described black patriots as "fools" in 1854, during the Civil War Whitfield wrote an appeal to free blacks to support the government's cause. He implored them to enlist so that Lincoln could have "the greatest and most valiant army the world ever saw."[49] Both Delany and Douglass, at polar opposite ends of the black political spectrum, actively supported the war effort and served as recruiting agents. Thus the Civil War diverted the energies of the emigrationist movement, and passage of the Thirteenth, Fourteenth, and Fifteenth Amendments quelled the idea until the Republican betrayal of 1877.[50] Given the specific reactions to the Kansas-Nebraska Act, the western expansion of slavery, and the triumph of popular sovereignty, the mid-1850s

represented a significant radicalization of black political discourse—the effects of which resonate well into the twentieth and twenty-first centuries.

Notes

1. John Blassingame, ed., *Slave Testimony: Two Centuries of Letters, Speeches, Interviews, and Autobiographies* (Baton Rouge: Louisiana State University Press, 1977), 167–69; Philip Foner and Robert James Branham, eds., *Lift Every Voice: African American Oratory, 1787–1900* (Tuscaloosa: University of Alabama Press, 1998), 271–73.
2. *New York Tribune,* July 18, 1854. Emphasis added.
3. Peter H. Wood, *Strange New Land: Africans in Colonial America* (New York: Oxford University Press, 2003), 23–34. For more detailed discussions of seventeenth-century free black communities in North America, see T. H. Breen and Stephen Innes, *"Myne Owne Ground": Race and Freedom on Virginia's Eastern Shore, 1640–1676* (New York: Oxford University Press, 1980); Graham Russell Hodges, *Root and Branch: African Americans in New York and East Jersey, 1613–1863* (Chapel Hill: University of North Carolina Press, 1999); and William H. Williams, *Slavery and Freedom in Delaware, 1639–1865* (Wilmington: Scholarly Resources, 1996).
4. Mary Frances Berry and John W. Blassingame, *Long Memory: The Black Experience in America* (New York: Oxford University Press, 1982), 33–35; Leon Litwack, *North of Slavery: The Negro in the Free States, 1790–1860* (Chicago: University of Chicago Press, 1961), 6–16.
5. David Geggus, *Haitian Revolutionary Studies* (Bloomington: Indiana University Press, 2002), 5–7; David Geggus, ed., *The Impact of the Haitian Revolution in the Atlantic World* (Columbia: University of South Carolina Press, 2001), ix, 4–5, 209. Geggus points out that the former French Caribbean colony produced roughly half of all coffee and sugar consumed in Europe and the Americas in the 1780s. Saint-Domingue was, without a doubt, the most highly prized European colonial possession in the Caribbean, and it greatly outproduced neighboring Cuba and Jamaica.
6. Litwack, *North of Slavery,* 3–15.
7. Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York: Oxford University Press, 1970), 88–90, 96.
8. Litwack, *North of Slavery,* 34–35.
9. Roger W. White, "Voice of a Fugitive: Henry Bibb and Antebellum Black Separation," *Journal of Black Studies* 4 (March 1974): 269–70.
10. James A. Rawley, *Race and Politics: "Bleeding Kansas" and the Coming of the Civil War* (Philadelphia: J. B. Lippincott, 1969), 10.
11. James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 70–77; Foner, *Free Soil, Free Labor, Free Men,* 186–188; Rawley, *Race and Politics,* 17–18.

12. McPherson, *Battle Cry,* 78–80. Between 1850 and 1863, 332 captives were returned to slavery while only 11 were released as free people.
13. McPherson, *Battle Cry,* 81; White, "Voice of the Fugitive," 272.
14. Rawley, *Race and Politics,* 17-18.
15. McPherson, *Battle Cry,* 121.
16. Michael P. Johnson, ed., *Abraham Lincoln, Slavery, and the Civil War: Selected Writings and Speeches* (Boston: Bedford/St. Martin's, 2001), 42–49; James Brewer Stewart, *Holy Warriors: The Abolitionists and American Slavery* (New York: Hill and Wang, 1976), 162–64.
17. Stewart, *Holy Warriors,* 162; Johnson, *Abraham Lincoln, Slavery, and the Civil War,* 44; McPherson, *Battle Cry,* 121; Rawley, *Race and Politics,* 29.
18. Rawley, *Race and Politics,* 29; Johnson, *Abraham Lincoln, Slavery, and the Civil War,* 43–46; McPherson, *Battle Cry,* 122–23.
19. Abraham Lincoln, "Speech on the Kansas-Nebraska Act at Peoria, Illinois," in Johnson, *Abraham Lincoln, Slavery, and the Civil War,* 48–49; Stewart, *Holy Warriors,* 163–64; Robert Fogel, *Without Consent or Contract: The Rise and Fall of American Slavery* (New York: W. W. Norton, 1989), 370–71; Nathan Irvin Huggins, *Slave and Citizen: The Life of Frederick Douglass* (Glenview IL: Scott, Foreman, 1980), 68.
20. Rawley, *Race and Politics,* 40; Fogel, *Without Consent,* 351; Stewart, *Holy Warriors,* 164.
21. Rawley, *Race and Politics,* 84–85, 88, 91. Twenty-five years after passage of the Kansas-Nebraska Act, this circumstance changed dramatically when more than 40,000 African Americans left the post-Reconstruction South to settle in Kansas, Nebraska, and Oklahoma. The same region that symbolized the triumph of human bondage over liberty to Abraham Lincoln became the locus of black freedom in 1879 as the Exodusters claimed homesteads and established independent black towns as far away from the reaches of hostile whites as possible. In the intervening span of time between 1854 and the 1879 Southern exodus, a dramatic shift in black political discourse allowed for such nationalist enterprises to hold sway. For detailed commentary on the Kansas Exodus, see Nell Irvin Painter, *Exodusters: Black Migration to Kansas after Reconstruction* (New York: W. W. Norton, 1986 [1976]).
22. Jane Pease and William Pease, "Negro Conventions and the Problem of Black Leadership," *Journal of Black Studies* 2 (September 1971): 30.
23. Quoted in Herbert Aptheker, *To Be Free: Pioneering Studies in Afro-American History* (1948; New York: Carol, 1991), 61; Henry Highland Garnet, "An Address to the Slaves of the United States of America." (1843), reprinted in Patricia Liggins Hill, ed., *Call & Response: The Riverside Anthology of the African American Literary Tradition* (Boston: Houghton Mifflin, 1998), 268–72; Howard H. Bell, "Expressions of Negro Militancy in the North, 1840–1860," *Journal of Negro History* 45 (January 1960): 12; Vincent Harding, *There Is a River: The Black Struggle for Freedom in America* (San Diego: Harcourt Brace, 1981), 143, 361; Howard H. Bell, ed., *Minutes of the Proceedings of the National Negro Conventions, 1830–1864* (New York: Arno Press, 1969), 1843: 6–26.

24. Bell, "Expressions of Negro Militancy," 12–14; *Liberator*, November 19, 1847; Bell, ed., *Minutes of the Proceedings of the National Negro Conventions*, 1847: 32.
25. Bell, "Expressions of Negro Militancy," 12–14.
26. Bell, "Expressions of Negro Militancy," 12–14, 17, 20; Aptheker, *To Be Free,* 61; Rawley, *Race and Politics,* 130; Glenn Linden, *Voices from the Gathering Storm: The Coming of the American Civil War* (Wilmington DE: Scholarly Resources, 2001), 93.
27. Linden, *Voices from the Gathering Storm,* 104; *Frederick Douglass' Paper*, May 26, 1854.
28. *Frederick Douglass' Paper*, June 2, 1854; Philip S. Foner, ed., *The Life and Writings of Frederick Douglass* (New York: International, 1950), 2:284–89, 564.
29. Linden, *Voices from the Gathering Storm,* 107.
30. *Frederick Douglass' Paper*, September 15, 1854.
31. William S. McFeely, *Frederick Douglass* (New York: W. W. Norton, 1991), 179, 186–88; Aptheker, *To Be Free,* 62–63; Foner, ed., *The Life and Writings of Frederick Douglass*, 316–32; *Frederick Douglass' Paper*, November 25, 1854.
32. Quoted in Aptheker, *To Be Free,* 62–63.
33. Of course, Douglass himself had used force as a slave in self-defense and later recruited black soldiers for the Union army. In August 1834, Douglass had a two-hour wrestling bout with Edward Covey, a renowned "Negro Breaker." After his apparent victory, Douglass recounts, "The whole six months afterwards, that I spent with Mr. Covey, he never laid the weight of his finger upon me in anger." See Frederick Douglass, *Narrative of the Life of Frederick Douglass: An American Slave* (1845; Boston: Bedford Books, 1993), 78–79. See also Tekla Ali Johnson's essay in this volume for her interpretation of Douglass's conversion to the use of force to end slavery.
34. Bell, "Expressions of Negro Militancy," 17; Robert L. Harris, "H. Ford Douglas: Afro-American Antislavery Emigrationist," *Journal of Negro History* 62 (July 1977): 217–21; *Speech of H. Ford Douglas, In Reply to Mr. J. M. Langston before the Emigration Convention, at Cleveland, Ohio. Delivered on the Evening of August 27, 1854* (Chicago: Wm. H. Worrell, 1854), 11–12; Kathleen O'Mara Wahle, "Alexander Crummell: Black Evangelist and Pan-Negro Nationalist, *Phylon* 29 (Winter 1968): 389.
35. Richard Blackett, "Martin Delany and Robert Campbell: Black Americans in Search of an African Colony," *Journal of Negro History* 62 (January 1977): 1.
36. Blackett, "Martin Delany," 2–5, 7; Martin Delany, *The Condition, Elevation, Emigration, and Destiny of the Colored People of the United States Politically Considered* (Philadelphia: Martin Delany, 1852), 169; Ella Forbes, "African-American Resistance to Colonization," *Journal of Black Studies* 21 (December 1990): 222; Edward S. Redkey, *Black Exodus* (New Haven: Yale University Press, 1969), 20. Between 1857 and 1862, Delany did become much more open to African emigration and, in fact, hoped to establish a colony in coastal Nigeria. The American Civil War diverted his energies and significantly altered the aims of emigrationist leaders.

37. Roger W. Hite, "Voice of a Fugitive: Henry Bibb and Ante-bellum Black Separatism," *Journal of Black Studies* 4, no. 3 (1974): 270, 272–76. For more regarding Bibb's activism, see Henry Bibb, *Narrative in the Life and Adventures of Henry Bibb, an American Slave* (New York: Scribner & Associates, 1849). See also Howard H. Bell, "The Negro Emigration Movement, 1849–1854: A Phase of Negro Nationalism," *Phylon* 20 (Winter 1959): 134.
38. Martin R. Delany, "The Political Destiny of the Colored Race," in Sterling Stuckey, ed., *The Ideological Origins of Black Nationalism* (Boston: Beacon Press, 1972), 195–236.
39. Joan Sherman, "James Monroe Whitfield, Poet and Emigrationist: A Voice of Protest and Despair," *Journal of Negro History* 57 (April 1972): 173–74; Howard H. Bell, "Negro Nationalism: A Factor in Emigration Projects, 1858–1861," *Journal of Negro History* 47 (January 1962): 45; Howard H. Bell, "Negro Nationalism in the 1850s," *Journal of Negro Education* 35 (Winter 1966): 101; *North Star*, September 25, November 15, and December 20, 1853.
40. Elizabeth Rauh Bethel, "Images of Hayti: The Construction of an Afro-American Lieu De Memorie," *Callaloo* 15 (Summer 1992): 832, 838; Bell, "Negro Nationalism, 1858–1861," 44.
41. Bell, "Negro Nationalism, 1858–1861," 44; James M. McPherson, "Abolitionist and Negro Opposition to Colonization during the Civil War," *Phylon* 26 (Summer 1965): 392.
42. Foner and Branham, eds., 288–304; Delany, "The Political Destiny of the Colored Race," 236.
43. Sherman, "Whitfield," 174; Bell, "Negro Nationalism in the 1850s," 101.
44. Monroe Fordham, "Nineteenth-Century Black Thought in the United States: Some Influences of the Santo Domingo Revolution," *Journal of Black Studies* 6 (December 1975): 117–20; Sylvia Frey, *Water from the Rock: Black Resistance in a Revolutionary Age* (Princeton: Princeton University Press, 1991), 230; H. W. Flournoy, ed., *Calendar of Virginia State Papers and Other Manuscripts*, 11 vols. (Richmond: Virginia State Library, 1890), 6:436–38, 453, 470, 475; Geggus, ed., *Impact of Haitian Revolution*, 9, 93–97; John Potter to Langdon Cheves, July 5, 1822, Langdon Cheves Papers, South Carolina Historical Society; Second Confession of Jesse Blackwood, 26 June 1822, Examination of Rolla Bennett, 25 June 1822, and Second Confession of Bacchus Hammet, 17 July 1822, all in Records of the General Assembly, Governor's Messages, South Carolina Department of Archives and History.
45. Fordham, "Nineteenth-Century Black Thought," 120; Howard H. Bell, ed., *Black Separatism and the Caribbean* (Ann Arbor: University of Michigan Press, 1970), 23–24.
46. Fordham, "Nineteenth-Century Black Thought," 121–22.
47. Fordham, "Nineteenth-Century Black Thought," 123–25; McPherson, "Abolitionist and Negro Opposition to Colonization," 392; Bell, "Negro Nationalism in the 1850s," 103.
48. Wilson Jeremiah Moses, *The Golden Age of Black Nationalism, 1859–1925* (New

York: Oxford University Press, 1978), 87; Bell, "Negro Nationalism, 1858–1861," 51–52; Bell, "Negro Nationalism in the 1850s," 103; *Douglass' Monthly*, May 1, 1861. Douglass had written the editorial shortly before Fort Sumter; and by the time violence erupted, the printer had already set the type and he could not retract his statement.

49. Sherman, "Whitfield," 174. As Sherman notes, after 1865, Whitfield wrote poetry that celebrated the Emancipation Proclamation and American history. In fact, verses from an 1867 piece entitled *Poem* read:

> Proclaim the truth that equal laws
> Can best sustain the righteous cause;
> And let this nation henceforth be
> In truth the country of the free.

Quoted in Sherman, "Whitfield," 176.

50. Dorothy Sterling, *The Making of an Afro-American: Martin Robinson Delany, 1812–1885* (Garden City NY: Doubleday, 1971), 221–22.

Chapter Eight

Where Popular Sovereignty Worked

Nebraska Territory and the Kansas-Nebraska Act

NICOLE ETCHESON

Like a well-behaved sibling in a family with a wayward child, Nebraska has received less attention than Kansas. Shortly after Congress created the two territories in May 1854, Kansas quickly monopolized the nation's attention with its problems. An early history of Nebraska noted that Illinois senator Stephen A. Douglas, author of the Kansas-Nebraska Act, always referred to the legislation as "the Nebraska bill," but Nebraska Territory lacked the turmoil that made Kansas bleed.[1] As a result, there have been many books on territorial Kansas, but there is no comparable literature on Nebraska.

In the first edition of his *History of Nebraska,* James C. Olson asserts that the "politics in Nebraska territory were lusty, the debates frequently acrimonious, and the proceedings often characterized by the excesses common to a frontier society." Nonetheless, Olson concedes that Nebraska's territorial politics were "pallid in comparison with the bloody conflicts raging in the twin territory to the south—and for that reason often ignored."[2] The "usurpation by Kansas of first place in the name" owed, in part, to the fact that "the spectacular and tragical political procedure in 'bleeding Kansas' . . . gave the territory the full place in the public eye to the exclusion of Nebraska with the comparatively tame events of its organization."[3]

Kansas's problems are said to have resulted from implementation of a new doctrine, popular sovereignty, contained in the Kansas-Nebraska legislation. The new territories lay in the northern part of the Louisiana Purchase, a region in which Congress had forbidden slavery. The 1854 Kansas-Nebraska Act, however, repealed that prohibition and instead allowed the settlers to decide whether or not to have slavery. In Kansas Territory, popular sovereignty quickly produced confusion, election fraud, and finally violence. Settlement groups from Missouri, New England, and the Midwest clashed at the polls and in the fields. Missourians crossed over the river and voted, although they did not yet reside in Kansas Territory. New England and Midwestern settlers rejected the resulting election of a proslavery territorial legislature as illegitimate, formed their own extralegal territorial government, and petitioned Congress for admittance as a free state. For the next several years, the majority in Congress as well as presidents Franklin Pierce and James Buchanan not only rejected those petitions but also condemned the Free Soilers as lawless insurrectionaries, even traitors. Despite increasingly frantic efforts to save Kansas for slavery by the proslavery party inside the territory and its allies in national politics, the Free Soilers' greater numbers finally secured their possession of the territorial legislature. The unwillingness of moderate Northerners to sanction egregious voter fraud left no hope by 1858 that Kansas would be admitted as a slave state. Although Kansas would not gain statehood until 1861, it would, after the long struggle known as "Bleeding Kansas," finally become a free state. Assessing this story, scholars have generally concluded that popular sovereignty failed.[4]

Curiously, Nebraskans viewed popular sovereignty not as a failure but as progress. An essay on acting territorial governor Thomas B. Cuming published in 1892 extolled his ability to bring "peace, prosperity, and progress" to the new territory. Cuming did this by "the great principle of popular sovereignty which he vindicated and established here in stormy times among enraged men who thirsted for his blood."[5] The association between popular sovereignty and "peace, prosperity, and progress" was uttered almost

forty years after the territory's organization, long after many people—Republican politicians as well as historians—had condemned popular sovereignty. Cuming himself, speaking to the legislature in 1857, made no mention of "stormy times." Rather, he congratulated Nebraska on having avoided the "lamentable dissensions" of "our sister territory." Although Kansas had "wider notoriety, we may well congratulate each other upon the verification of the political truth, 'Happy is that people whose annals are tranquil.'" Because Nebraska had been spared the "interference of reckless agitators and the mad efforts of intolerant fanatics, we can furnish to the world an enviable proof of the legitimate effect of the genius and spirit of our republican institutions."[6] Cuming announced, "'Popular sovereignty' has been vindicated; 'Progress' verified."[7]

Nebraska had vindicated popular sovereignty because, unlike what occurred in Kansas, no "agitators" or "fanatics" had poisoned its politics. No guerrilla bands prowled the territory, warning settlers out. Settlers did not flee the territory for fear of violence. Eastern sympathizers did not smuggle weapons to embattled Nebraskans. And national propaganda did not encourage Americans to "save" Nebraska from slavery or for slavery or from or for anything at all.[8]

Similarities in Nebraska and Kansas Internal Politics

In many ways Nebraska and Kansas territories were not as divergent in their histories as this rendering might make it seem. The problems began in Kansas Territory when Missourians, seeking to secure the prize offered by popular sovereignty, crossed the river to vote illegally in Kansas. Then one might suppose that, since there was no Bleeding Nebraska, there were no irregularities in the organization of Nebraska Territory. In fact, just as Missourians had intervened in Kansas Territory, so too did Iowans work to organize Nebraska. Like the Missourians, Iowans assumed that they would control their neighbor, and so they crossed into the territory to vote. Nebraska, like Kansas, then had to deal with the election of nonresident legislators and territorial delegates, voter fraud, and election challenges.

David M. Johnston, recollecting his decision to run for office in the newly organized Nebraska Territory, filed a land claim in Richardson County before starting his campaign. Then he introduced himself to the thirty or so voters in the county. But he did most of his campaigning in Missouri and Iowa. His election chances seemed good until high waters on the Missouri River prevented many of his supporters from crossing the river and voting. He gained a seat in the territorial house, although not the territorial delegate's position he had wanted. So common was his circumstance that he remembered Nebraska territorial legislators being addressed during debate as "'the gentleman from New York,' 'the gentleman from Iowa,' or some other state."[9] One historian of Nebraska says this practice was common. Similar stories were told in Kansas. A visitor to the Kansas territorial legislature "was asked 'if he enquired for the member from Fort Scott [Kansas Territory]?' His reply was 'Fort H——ll!—I wish to see the member from Lafayette Co., Mo.'"[10] Although territorial legislators' ties to Missouri raised great controversy in Kansas, it was accepted as a matter of course by Johnston that some Nebraska legislators had no property or ties to the territory of any kind. While these stories became part of the propaganda wars showing that the territorial legislature of Kansas was illegitimate, no such uses were made of Nebraska legislators' lack of residency.

William N. Byers, who surveyed Nebraska Territory in 1855, summed up the legislators well: "Some of the members, it was alleged, had no well established residence in Nebraska, but were actually residents of Iowa and Missouri. They crossed the river, held elections, and went back to the above named states to sleep."[11] Some historians of the territory believed that not a single one of the thirty-nine members of the first territorial legislature "had a permanent footing in the territory."[12] The president of the council, or upper house, lived in Glenwood, Iowa, and never moved to Nebraska. Johnston claimed that Hascall C. Purple had ridden with a few men into the territory, stopped, held an election, "not knowing whether or not he was even in the county he claimed to represent. However, no one challenged his right to his seat, and

he was an excellent member."[13] Therein lay the difference: in Kansas, there would have been a challenge, not only of the legislator's residency but also of the legitimacy of the cause he represented, the proslavery party. By contrast, Nebraska challenges tended to be more parochial, concerning individual or party advantage, and did not generally address the debate over slavery.

Hiram P. Bennet and his brother established a claim in Nebraska as soon as the Nebraska bill passed, but they did not move there for several months. Bennet had only lived in the territory "some few weeks" before he was elected to the territorial legislature. Uneasy about his residency, he did not rise for the oath of office that the territorial secretary administered to the assembled legislators. The oath required him to swear that he was a citizen of Nebraska, and he doubted if his residency qualified.[14] Yet Bennet felt no such unease when he challenged Bird B. Chapman, who beat him in the territorial delegate election in the fall of 1855. Bennet objected that Chapman was an Ohioan, had returned to Ohio when he did not win office the previous year, and had only returned in time to established the necessary forty days of residency before standing for office in the territory. Bennet believed he had won the vote but had been denied the office because the officials who certified the result were his political enemies. He complained that when he tried to serve Chapman notice of his challenge and asked him his residence, "In truth he did not know where it was; and I could not serve a notice at his residence in the Territory because he had none there."[15]

Just as the Kansas territorial legislature adopted laws based on the Missouri code, so too did Nebraska base its law code on that of another state—Iowa. Territorial Governor Mark Izard, himself from Arkansas, said it was natural to do so as most of the residents were from Iowa. Nebraska legislators complied, "adopting *in toto* the civil and criminal code of Iowa."[16] Again, Kansas's adoption of the Missouri code was condemned as a sign of that territory's lack of independence. Yet no one thought it odd for Nebraska to adopt Iowa's code.

Nonresidency and subservience to Missouri were not the only

charges made against Missourians in Kansas. They were also accused of falsifying ballots, repeat voting, and myriad types of voter fraud. The fraud in Kansas outraged many in the North and even embarrassed some Southerners. Although there was no Bleeding Nebraska, that did not mean that Nebraska was free of electoral irregularities.

In late 1859, Samuel G. Daily, who felt that he had been cheated of the territorial delegate's seat by fraudulent voting in that fall's election, contested the seat that had been awarded to Experience Estabrook. The resulting testimony was replete with the same kinds of election shenanigans found in Kansas—and some unique to Nebraska. Those deposed reported voters changing clothes and voting again, liquor at the polls, lists of names being copied into poll books, empty counties that returned over a hundred votes, a county that was not legally organized to even hold an election returning almost 300 votes (when Estabrook's majority was only 300 votes), poll books that disappeared so that fraud could not be proven, and emigrants to the gold fields, soldiers, Indians, unnaturalized foreigners—all manner of ineligible voters—casting ballots. As James Olson summarizes the result, "The House of Representatives found that while there had been fraud on both sides, there was less on Daily's, and allowed him to take over the seat."[17]

A year later, Daily was challenged for the seat by J. Sterling Morton, a brash young Democrat. Morton won the balloting by fourteen votes. Naturally Daily challenged this outcome, whereupon Morton filed a counter challenge. Both sides made lengthy allegations of fraud. According to Olson, "The two men spent the winter collecting evidence to support their charges, and it soon became clear that there was plenty of evidence on both sides. Territorial elections were conducted in a free and easy manner, and a little manipulation was the rule rather than the exception."[18] The territorial governor, the bibulous Samuel W. Black, gave the certificate of election first to Morton and then to Daily. Morton claimed that Black had switched because he owed Morton money and had become indignant at Morton's efforts to collect. In the

end, the Republican-dominated House of Representatives was unable to figure out who really deserved the seat and gave the seat to Daily, the Republican.[19]

Bleeding Nebraska? Why Not?

If what Missourians did in Kansas produced shock, outrage, and ultimately violent resistance, why didn't Nebraska bleed as well?

First, the irregular voting, which was completely one-sided in Kansas Territory, was more balanced in Nebraska. What Missourians, and then Iowans, did in voting in the territories was not so unusual for the frontier. But the Missourians did it so well—overdid it, in fact—that they produced a reaction. The territorial census for Kansas showed 2,905 voters in Kansas in February 1855. But proslavery candidates won the March 30, 1855, election of the territorial legislature by majorities of 5,000 or 6,000 votes. People noticed. Any illegal ballots slipped in by Free Soil voters—and proslavery men insisted the Free Soilers used fraud, too—were completely swamped. Throughout the territorial period in Kansas, the proslavery party had the monopoly on the successful and egregious use of fraud.[20]

As was true of Kansas and other frontiers, both parties in Nebraska Territory relied on voter fraud. The Democrats had the advantage that they controlled the territorial and local offices and therefore were the ones counting the ballots. The losing territorial delegate candidate, however, could appeal to the U.S. House of Representatives, which was in Republican hands by the late 1850s.[21] It was a recipe for fraud, discontent, and continual challenge to the results. But perhaps it explains why charges of voter fraud in Nebraska were less damaging than in Kansas. In Kansas, the proslavery party had the monopoly on successful voter fraud. In Nebraska, the sides were balanced in what they could achieve by fraud because no party monopoly controlled the territorial and local offices.

For example, one Democratic election judge from Falls City, Nebraska Territory, kept a suspicious eye on two Republicans with whom he was counting election results. He found them trying

to add two names to the tally. "I told them that game would not work." He was also suspicious when the ballot box was left in the safe of a local storekeeper, against the rule that it should remain always with the election judges. The judge later admitted that he never found more than the two fraudulent votes.[22] This is tame by Kansas standards.

The most bitterly remembered election fraud in territorial Nebraska occurred during the transition to statehood. At the same time that the legislature passed the proposed state constitution, it passed a resolution calling for the election of state officers. Determined to have two Republican senators, officials counted the soldier vote for legislative elections but threw out the vote from Rock Bluffs precinct on a "technical irregularity." If the Rock Bluffs vote had been counted, it would have elected enough Democrats to the state legislature to have possibly selected Democratic senators.[23] Democrats complained, "Our county canvess[e]rs found that the entire Democratic ticket was elected in Cass and that something must be *did*. So they looked over the democratic precincts in the [county] and found Rock Bluffs second in the number of votes and largely Democratic and by throwing out that vote would elect their ticket so that the pure and undefiled negro worshipers and loyal martyrs might continue to govern a miss guided people the second precinct in size in the rich county of cass had to be disfranchised. And for cause these worthy canves[se]rs assign no fraud no ballot box stuffing no illegal voting but the slight informality that the judges adjourned for dinner and took the ballot box with them."[24] Another Democrat wrote, "That Rock Bluffs affair is painfully odious. It is unmitigated infamy. We must fight for the Democratic delegation to the bitter end."[25]

Although the Democrats remained angry, they did not withdraw from the political process entirely, as happened in Kansas when Free Soilers were cheated in the initial territorial legislative election. That split in Kansas, between a proslavery territorial government and a Free Soil extralegal movement, was a fundamental source of Kansas's turmoil. The proslavery party in Kansas invoked law and order to legitimize itself. Proslavery men

controlled the territorial legislature, which was the recognized government of the territory. The proslavery party tried to suppress the Free Soil movement as illegal, and the Free Soil movement invoked popular sovereignty, arguing that Democrats did not control the territorial legislature because the elections had been unfairly conducted. Because the sacred right to the elective franchise had been trampled in Kansas, Free Soil voters resisted the "bogus" government of the territory. The two sides in Kansas were thus irreconcilable. It was the proslavery party's insistence that Free Soilers accept the territorial government and the Free Soilers' refusal to do so that led to armed conflict. Such a standoff between a territorial government and a large portion of the settlers did not occur in Nebraska.[26]

Second, while there were large numbers of Missourians in Kansas Territory—probably enough to have carried those initial elections without needing to resort to nonresident voting—there were also large numbers of New Englanders and especially Midwesterners. There were thus two competitive voting blocs in Kansas: a proslavery one and a Free Soil one. There was no such comparable division in Nebraska.

Although there were small numbers of slaves in Nebraska, there was no proslavery party to contest the Iowans' Free Soil dominance. The great sectional split of Nebraska politics was not the North and South of the Union, but north and south of the Platte River. Thus the term "Sectional Politics" appears in an 1887 article on territorial history to head a discussion of such issues as to where to put the territorial capital.[27] Olson says that "political contests were decided on personal [or] sectional considerations, [and] particularly the latter" rather than as partisan contests. Because of sectional identities, "counties south of the Platte made common cause against those north of the river."[28]

The animosity between the two sections arose from the high-handed action of Nebraska territorial governor Thomas Cuming. It was Cuming who was remembered for having vindicated popular sovereignty "in stormy times among enraged men who thirsted for his blood."[29] Cuming had enraged other territorial

Nebraskans not by taking a stand on the slavery issue but by locating the capital at Omaha. In the fall of 1854, two-thirds of the new territory's population lived south of the Platte River. The first census, in November 1854, found that of 2,732 people in Nebraska, 1,818 lived south of the Platte and 914 north of it. When the first Nebraska territorial governor, Francis Burt of South Carolina, died soon after arriving in the territory, his place was filled by the territorial secretary, the Iowan Cuming. He gave the area north of the Platte one more councilman and two more representatives than he gave to the area south of the Platte, and he designated Omaha as the capital in order to suit his friends who were land speculators from Council Bluffs.[30]

Although Cuming had the authority to make Omaha the capital, opponents felt that he had violated the spirit of popular sovereignty. Public meetings denounced Cuming as a "tyrant." The *Nebraska Palladium* lamented, "And this in Nebraska, and enacted by the very men who are so loud in the praises of popular sovereignty! Oh! Shame! Where is thy blush?"[31] Naturally the *Palladium*, officially published in Bellevue, would oppose the pro-Omaha faction. But the *Nebraska Palladium* had actually been printed in its early days in Iowa. In the dispute over where to place the capital, the anti-Omaha faction called for investigating the residency of the pro-Omaha members. Cuming's allies averted this by making a rule that the governor's certificate of election sufficed and that investigation of residency was "inexpedient."[32]

The Omaha faction was capable of retaliating in kind. In 1858, when the anti-Omaha faction plotted to remove the capital, the Omaha newspaper accused them of "Border Ruffianism in Nebraska! Kansas Outdone!! Bold Attempt at Revolution!!!" "Border Ruffians" was the name given to Missourians who crossed into Kansas to vote or fight in the territory. Although the language was as extreme as any found in Kansas, and the accusations about residency similar, the stakes were arguably less, being the site of the capital rather than the fate of the territory. Nonetheless, the dispute led to a fistfight on the floor of the territorial legislature.[33]

The animosity between the regions north and south of the Platte grew to such a pitch that some Democratic leaders considered a proposal to annex the South Platte region to Kansas. This would not only give the South Platte, they hoped, its political due, but was also envisioned as a solution to "the vexed Kansas question." The idea soon fizzled out, in part because Kansans were not interested, but it nevertheless demonstrated that territorial Democrats were ready to sacrifice Nebraska's tranquility to quiet the turmoil in Kansas and their own sectional quarrels.[34]

In addition to the dispute over where to put the capital, Nebraska's territorial delegate elections were marred by sectional disputes. Four of the seven elections of territorial delegates for Nebraska were contested. Kansas, too, had a long-running dispute between the Free Soil and proslavery parties over the territorial delegates. Both parties in Kansas elected a territorial delegate and then left Congress to decide which one legitimately represented Kansas. In Kansas, the territorial delegate contest was overtly about slavery. In Nebraska, however, the splits were sectional, between candidates from north or south of the Platte River, or partisan, between Democrat and Republican. The slavery issue was not as pressing. In the contested election between Samuel Daily and Experience Estabrook, one witness was asked his politics. He replied, "Opposition to democrats, and anti-slavery." Revealingly, the partisan affiliation came before the stand on slavery, an ordering that would have been reversed in Kansas. Another witness said he backed Estabrook in the election, and he urged Republicans to cross party lines for him, believing "he would not be unfriendly to the interests of the northern portion of the territory, and his election a triumph for the democratic party."[35]

Albert Watkins, a historian of early Nebraska, even believed that the pro- and anti-statehood parties, usually thought to be partisan in nature, were in fact based on sectionalism. The South Platte region, which lacked political power commensurate with its population under the territorial system, wanted a state government. Those north of the Platte, content with the status quo, opposed it.[36]

Finally, no one really expected Nebraska to become a slave state. That again is a fundamental reason that conflict occurred in Nebraska's southern neighbor. Missourians expected Kansas to become a slave state. It was, after all, directly to their west and considered suitable in soil and climate for crops, such as hemp, that slaves grew in Missouri. Northerners also viewed Kansas as vulnerable to slavery. Why else did they target it with their emigrant aid societies except to save it from becoming slave? Emigrant aid societies were not formed to save Nebraska from slavery, because there was no threat to that territory.[37]

Since both Iowa and Missouri settlers had lobbied Congress to organize the territories to their west, and both states had sent representatives to Congress, Congress split the northern part of the Louisiana Purchase in two in order to satisfy the two groups of settlers. Although the intention was not that one territory would be slave and the other free, people at the time assumed as much.[38] Missourians were willing to concede Nebraska. John Speer, a Kansas newspaperman and Free Soil politician, recalled that Missourians told Northern migrants that "the abolitionists MIGHT take Nebraska, but if they got Kansas, they would have to fight for it."[39] Another Free Soiler, Sara Robinson, remembered that Missourians frequently asked Northern settlers in Kansas, "What did you come here for? Why did you not go to Minnesota, or Nebraska? It is not half settled, and is as good country as this. But, no; you must come here. You want to get the whole of the territory. That belongs to the South."[40]

In 1857, Nebraska territorial governor Mark Izard contrasted the disturbed condition of Kansas, "torn by internal dissension, her virgin soil overrun and desecrated by armed and hostile factions, her people murdered and pillaged by roving bands of lawless marauders, betrayed by mercenary demagogues and unprincipled politicians," etc., with the peaceable aspect of Nebraska, where "the people led by the councils of wisdom and moderation have succeeded in frowning down all foreign interference and in resisting the earliest encroachments of domestic difficulty, and have added, in their example, another bright testimonial of

man's capacity for self-government to the many which already adorn the annals of the republic." Although this would seem another testimony to the virtues of popular sovereignty in Nebraska, the historians who quote Izard then go on to dismiss Nebraska's superiority as geographic luck. "Kansas was, by virtue of her contiguity to a slave state, the natural and the chosen battleground of the pro-slavery and the anti-slavery colonizers. . . . There was here no serious political question to fight over, and no force of any consequence to fight. In fact, no political question ever arose on the Nebraska horizon more heroic than the economic sectional question of the location of the capital, primarily raised and kept alive by the inconvenient barrier of the Platte River."[41]

Thus while some of the conditions existed for Nebraskans to become violent over the possible implementation of popular sovereignty to the territory, neither bleeding nor application of the doctrine occurred. While voter fraud existed in Nebraska Territory, it was less practiced and more party balanced than in Kansas. Perhaps even more telling, early migration to Nebraska consisted primarily of antislavery settlers. No one really expected slavery to obtain a lasting foothold.

Slavery in Nebraska Territory

Apart from the sectional dispute, Nebraska lacked big issues to agitate its politics. One historian cites the first territorial legislature as interested mostly in founding towns and speculating. Democrat J. Sterling Morton recalled that, in the late 1850s, one session of the territorial legislature had as its chief issue the selection of the public printer, and legislators failed to agree on anyone. Morton was being somewhat disingenuous. As territorial secretary, he precipitated the fight over the printing when he sought, for partisan reasons, to change the established procedure for picking the printer. But Morton was right that the fight over printing occurred at a time when the slavery issue was before the territorial legislature.[42]

Historians have often wondered why there was so much fuss about slavery in Kansas when there were so few slaves there—less

than two hundred in the census of 1855. But there were even fewer in Nebraska. One old settler recalled only three slave owners, each with perhaps two or three slaves. In late 1858, when the territorial legislature considered a bill to abolish slavery in the territory, someone counted six and a half slaves in Nebraska, the half being a child. Former Nebraska senator Thomas W. Tipton remembered that it had been routine for territorial officials to bring slaves to Nebraska, but that thirteen had been the most present at any one time. The census of 1860 counted ten slaves in Otoe County and five in Kearney County. All were women and their children who worked as domestic help. Many slaves in the territory worked for army officers at Fort Kearny and for Alexander Majors, owner of a freighting company.[43]

The most heated debate about slavery in Nebraska Territory appears to have occurred before there was even a territory. In the winter of 1853, a convention met at St. Joseph, Missouri, to petition for the Platte region to be organized. A resolution was proposed calling for protection of "property," including slaves. One participant remembered the convention about evenly split on the issue. "We finally *compromised* by agreeing to report nothing on the subject." The convention adjourned amicably over a champagne supper.[44]

The closest Nebraska came to Kansas-style argument over slavery occurred when the territorial legislature attempted to pass an abolition bill. The opposition insisted that slavery could not exist without "affirmative legislation," and therefore any prohibitory legislation was unnecessary as well as designed to excite public feeling. Democrats used Kansas as an example of the terrible things that happened if slavery were agitated: "The page of blood which Kansas has furnished to the history of the world should have been a warning to the fell hand which has attempted to strike such a blow at our peace and quiet," by the bill to abolish slavery in Nebraska Territory.[45] Democrats also argued that a prohibition was not needed as there were no slaves in Nebraska. To this, T. M. Marquett replied by enumerating the small number of slaves in Nebraska City and Fort Kearny. "Slavery does exist here, and if it

is wrong to hold a thousand slaves it is wrong to hold one. If there is only one slave here then there is a necessity for this law."[46] Such enlightened comments were balanced by those of Democratic newspaper editor Milton W. Reynolds. Reynolds wrote that slaves in the territory were "in a state of willing or voluntary servitude. . . . These three or four beloved servants are in an infinitely better condition than a majority of the white servants of this very city. . . . They fare better and go better dressed, and are treated more kindly and affectionately than the hotel servants throughout the entire northern states."[47] To free them, he argued, would subject them to poverty or real slavery.

Nebraska territorial governors worked to head off an explicit rejection of slavery. Governor Samuel W. Black vetoed one such bill, arguing that slavery "could not be disposed of until the adoption of a state constitution."[48] Precisely when the slavery issue could be settled—during the territorial period or only at the formation of a state government—was an ambiguity that popular sovereignty had not addressed. The governor, although a native of Pennsylvania, was taking the pro-Southern position that slavery could not be excluded from a territory at all. This would have raised enormous controversy in Kansas, as it seemingly invalidated popular sovereignty's promise to let settlers decide, but it went relatively unnoticed as there was little chance of slavery being instituted. The legislature was unable to override the veto. But in the next session the bill passed and the governor's veto was overridden. The prohibitory measure finally became law.[49]

It is notable that the debates in Nebraska did not produce the fissures that appeared in Kansas. Both sides maneuvered and used the territorial political system to advance their position in Nebraska: the Republicans sought a prohibition of slavery and the Democrats sought to have no express prohibition. But neither side challenged the legitimacy of the political process in Nebraska as happened in Kansas.

In fact, some participants in the debate showed no eagerness to grapple with the multifaceted components of the issue. Some Nebraska Democrats wanted to argue the finer points of the

"Douglas doctrine" that explicit prohibitions of slavery were unnecessary for the territories. When the *Dred Scott* decision ruled that Congress could not prohibit slavery in the territories, Stephen Douglas had asserted, most famously in his Freeport debate with Abraham Lincoln, that if the settlers did not want slavery and failed to pass the necessary local police laws to enforce it, it would not exist in the territory. This was Douglas's way of reconciling the Supreme Court decision with popular sovereignty.[50] One Nebraska Democrat and slave owner insisted, "The question should be let alone except when we meet the Republicans in debate and then let each Democrat construe the . . . platforms to suit himself. If we have to quarrel among ourselves about the poor oppressed 'nigger,' we might as well let the Republicans take control of affairs at once."[51] That this Nebraskan dismissed the subtleties of Democratic Party doctrine was doubtless in part to maintain harmony in an increasingly fractured party, but his assertion is interesting in that it dismisses as irrelevant the very issues that obsessed Americans in the 1850s.

Nebraska Territory's experience seemed to bear out Douglas's Freeport Doctrine. The legislature failed for years to pass an abolition bill, but it was not necessary because the settlers did not want slavery and did not spend that much time considering it. As one historian put it, "Nebraskans stopped short of joining the mainstream of American political activity that was increasingly dominated by the crisis of slavery and disunion."[52]

Nebraskans and Race

Just as Nebraskans did not truly engage the issue of slavery, they did not confront the issue of race until statehood. Here Nebraska Territory's history is the reverse of Kansas Territory's. Bleeding Kansas forced Kansans to confront the dilemma of race. Racist politicians, such as Kansas senator James H. Lane, recanted their former views and championed black rights. Kansas's notoriety as the home of old John Brown placed it at the forefront of the movement for black rights. Nebraskans, by contrast, were dragged kicking and screaming into the new racial order.[53]

At its first session, the territorial legislature considered, but failed to pass, a law to prevent free blacks from settling in Nebraska. Such bills were reintroduced in several later sessions. They never passed. Some early historians of Nebraska attribute that to enlightened sentiment in the territory, but the evidence is mixed. T. M. Marquett wrote a committee opinion opposing black exclusion, but he began by asserting that the committee "does not wish to be understood as desiring to have Negroes or mulattoes among us. . . . [I]t is a great evil to have Negroes or mulattoes among us." But he did go on to say, "Gentlemen cannot be in earnest in passing a bill which subjects a colored person to fine and imprisonment merely because they are so unfortunate as to be a negro, and on Nebraska soil." Most of Marquett's animus seemed directed at the proslavery men who "have commenced the persecution of a few Negroes for the sole purpose of driving them into bondage."[54] Marquett proposed colonization as a preferable solution.

In the late 1850s, the impetus for an exclusion bill arose from concern that runaway slaves were coming into Nebraska, en route to Canada, but often staying in the territory. The bill was resurrected in the 1859–60 session, apparently in an effort by Democrats to counter the abolition bill proposed by Republicans. The exclusion bill was proposed by S. F. Nuckolls, whose native state, Indiana, like many Midwestern states, possessed a black exclusion law. But the bill failed. The census of 1860 showed 67 free blacks in Nebraska out of a total population of 28,841. Black women married to white men and the children of those unions constituted a large portion of the total free black population.[55]

Unlike Kansas, in which both factions sought statehood in order to secure the goal of a free or slave state, Nebraskans were in no hurry to become a state. Although the question of statehood arose in 1859 (by which time Kansans already had had four constitutional conventions and constitutions), Nebraska voters rejected holding a convention, and the question remained dormant until 1864. Much of the effort arose from Republican Party desires to increase their strength in Congress. Opponents argued that the

expense of statehood would be too onerous. On one memorable occasion in 1864, although the Republicans succeeded in getting a bill through the territorial legislature calling for the election of a constitutional convention, Democrats masterminded a strategy whereby delegates were elected on the pledge that they would adjourn the convention. The convention met and immediately voted 37 to 7 to adjourn. Republicans had more success in 1866, when Governor Alvin Saunders resurrected the idea. Instead of a convention, a committee, the identities of whose members remain unknown to this day, wrote a constitution, and the territorial legislature narrowly passed it. Olson writes: "The constitution was pushed through the legislature in a way that would have been unusual for even the most minor, noncontroversial measure. On the day it was introduced the constitution was referred to a special committee . . . who reported it back favorably later in the day, but in time to enable the Council to pass it before adjourning. The vote was seven to six. . . . Four days later the constitution was approved by the House, and on the ninth Governor Saunders signed the bill. The constitution had not been printed for the use of members of either house, no amendments had been permitted, and in the lower house it was not even referred to a committee."[56] One might be tempted to point out the irony of implementing popular sovereignty in this way, but of course the Republicans who pushed this constitution had never been adherents to popular sovereignty.

In the U.S. Senate, however, Radical Republican Charles Sumner objected to the Nebraska constitution's restricting the vote to whites, calling the constitution "a shame to the people that bring it here." Nonetheless, the bill passed only to be vetoed by President Andrew Johnson. At the end of 1866, when Congress came back into session, Nebraska admission passed, this time with an amendment saying that suffrage could not be denied on the basis of race. Johnson again vetoed, but this time Congress overrode the veto. On March 1, 1867, Nebraska finally became a state when Johnson signed the statehood proclamation. Historians of early Nebraska dismissed the dispute as over the "enfranchisement of imaginary negroes."[57]

That remark, like the statehood story it is meant to sum up, indicates that Nebraskans—like President Johnson—just didn't seem to understand that the war had changed the nature of race relations. Historian Olson noted that black suffrage had not been denied accidentally. When the constitution was considered, the territorial house "voted down a resolution to strike the restriction from the constitution by the resounding margin of thirty-six to two."[58] To be fair, most northern states still rejected suffrage before the Fifteenth Amendment. After the Civil War, only Iowa and Minnesota, among northern states outside New England, opened suffrage to blacks. Kansas rejected black suffrage in an ugly campaign in which the issue was linked to votes for women, an even more controversial proposition.[59] But it is clear that congressional Republicans were dismayed that Nebraskans could still be asserting white rights at a time of profound change in American race relations.

Conclusion

Almost four decades later, Nebraskans were still arguing about how statehood had been achieved. Former governor John M. Thayer recalled that when he had taken the constitution to Washington, he tried to placate Senator Sumner by telling him that although the constitution discriminated, he had commanded black troops and knew their worth. He assured Sumner, "We shall change in Nebraska. The people will be ready ere long to blot that word 'white' from the constitution."[60]

In response, one of Nebraska's most prominent Democrats, J. Sterling Morton, objected to Thayer's reminiscences. First, Morton felt that the assurance that Nebraskans would change was "remarkable." Second, Morton objected that while there had been a scandal back in 1857 and 1858 over the failure of a proslavery constitution in Kansas to be submitted to the voters, Republicans in 1866 and 1867 had imposed Nebraska's constitution without allowing a referendum by the people. And finally Morton explained the Republican hypocrisy: "[I]t was a pretty good thing in Nebraska to make a constitution without submitting that ques-

tion [race] to the people, and it was a very wrong thing to do the same thing in Kansas."[61] Morton might have been referring to the fact that no convention had been called to draft the constitution or that the Nebraska constitution had been narrowly approved by the voters in the summer of 1866, but the Senate-mandated amendment allowing for black suffrage was not submitted.[62] In the end, Morton was also pointing out that the statehood process did not require Nebraskans to come to any reassessment of race relations.

Popular sovereignty worked in Nebraska because it faced conditions very different from those in Kansas Territory. Fraud was not monopolized by one party as in Kansas, and so did not prompt challenges to the legitimacy of the territorial government. Slavery was never as heated an issue as in Kansas. Instead, Nebraskans fought over where to put the capital. The slavery issue was not really in contest, because there was no real threat in Nebraska to the settlers getting what they wanted: a free state.

Notes

1. J. Sterling Morton and Albert Watkins, *History of Nebraska: From the Earliest Explorations of the Trans-Mississippi Region* (Lincoln: Western Publishing and Engraving Co., 1918), 134–35.
2. James C. Olson, *History of Nebraska* (Lincoln: University of Nebraska Press, 1955), 122.
3. Morton and Watkins, *History of Nebraska,* 134–35.
4. Nicole Etcheson, "The Great Principle of Self-Government: Popular Sovereignty and Bleeding Kansas," *Kansas History* 27 (Spring/Summer 2004): 14–29. See also Nicole Etcheson, *Bleeding Kansas: Contested Liberty in the Civil War Era* (Lawrence: University Press of Kansas, 2004).
5. J. M. Woolworth, "Thomas B. Cuming," *Transactions and Reports of the Nebraska State Historical Society* (Lincoln: State Journal Co., 1892), 4:80.
6. Thomas Weston Tipton, *Forty Years of Nebraska: At Home and in Congress* (Lincoln: State Journal Co., 1902), 4.
7. Morton and Watkins, *History of Nebraska,* 235.
8. See Etcheson, *Bleeding Kansas,* 28–49.
9. David M. Johnston, "Nebraska in the Fifties," *Publications of the Nebraska State Historical Society* (Lincoln: Nebraska State Historical Society, 1919), 19:192–93. See also Olson, *History of Nebraska,* 90.
10. *Herald of Freedom* [Lawrence, Kansas Territory], Sept. 8, 1855.
11. Letter of Nov. 17, 1896, in Jay Amos Barrett, "Legislators of 1855: Biographi-

cal Fragments," *Proceedings and Collections of the Nebraska State Historical Society* (Lincoln: State Journal Co., 1898), 7:131.

12. Morton and Watkins, *History of Nebraska,* 172.
13. Johnston, "Nebraska in the Fifties," 195–96.
14. H. P. Bennet, "The First Territorial Legislature of Nebraska," *Proceedings and Collections of the Nebraska State Historical Society* (1898), 7:88–92.
15. Tipton, *Forty Years of Nebraska,* 80–81.
16. Morton and Watkins, *History of Nebraska,* 185, 187; Olson, *History of Nebraska,* 91.
17. Albert Watkins, "Contested Elections of Delegates to Congress from Nebraska," *Publications of the Nebraska State Historical Society* (1919), 19:201–328; Olson, *History of Nebraska,* 125.
18. Olson, *History of Nebraska,* 126–27.
19. Morton and Watkins, *History of Nebraska,* 313.
20. Etcheson, "Great Principle of Self-Government," 19–21.
21. Morton and Watkins, *History of Nebraska,* 289.
22. James Buchanan to J. Sterling Morton, Oct. 27, 1859, in J. Sterling Morton Papers, Nebraska State Historical Society, Lincoln, roll 2. See also Etcheson, "Great Principle of Self-Government."
23. Morton and Watkins, *History of Nebraska,* 363, 365; Olson, *History of Nebraska,* 130–31.
24. J. R. Porter to J. Sterling Morton, June 11, 1866, in Morton Papers, roll 3.
25. G. L. Miller to Morton, June 13, 1866, in Morton Papers, roll 3.
26. See generally Etcheson, *Bleeding Kansas,* 50–138.
27. A. G. Warner, "Sketches from Territorial History," *Transactions and Reports of the Nebraska State Historical Society* (1887), 2:39–46.
28. Olson, *History of Nebraska,* 123; Morton and Watkins, *History of Nebraska,* 134–35.
29. Woolworth, "Thomas B. Cuming," 80.
30. Dennis Thavenet, "The Territorial Governorship: Nebraska Territory as Example," *Nebraska History* 51 (Winter 1970): 392–93; Frederick C. Luebke, *Nebraska: An Illustrated History* (Lincoln: University of Nebraska Press, 1995), 43–44; and Olson, *History of Nebraska,* 87, 93.
31. Morton and Watkins, *History of Nebraska,* 177. See also 159–63, 174–76.
32. Olson, *History of Nebraska,* 83–84; Thavenet, "Territorial Governorship," 393.
33. Warner, "Sketches from Territorial History," 43–45.
34. Albert Watkins, ed., "Official Report of the Debates and Proceedings in the Nebraska Constitutional Convention," *Nebraska State Historical Society Publications* (1913), 13:473; A. Hopkins to My Dear "Starlin," Nov. 30, 1858, B. B. Chapman to Friend Morton, Feb. 14, 1859; and S. F. Nuckolls to J. Sterling Morton, Jan. 26, 1859, all in Morton Papers, roll 2; Morton and Watkins, *History of Nebraska,* 284.
35. Watkins, "Contested Elections," 197–99, 257, 275. For the territorial delegate controversy in Kansas, see Etcheson, *Bleeding Kansas,* 73–74, 128–29, 136.

36. Watkins, ed., "Official Report of Debates," 473–95.
37. Etcheson, *Bleeding Kansas*, 29–35.
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40. Sara T. L. Robinson, *Kansas: Its Interior and Exterior Life* (New York: Books for Libraries Press, 1971, orig. 1856), 221–22.
41. Morton and Watkins, *History of Nebraska,* 278.
42. Luebke, *Nebraska,* 49; J. Sterling Morton to Wm. Medill, Nov. 1, 1858, in Morton Papers, roll 47; James C. Olson, *J. Sterling Morton* (Lincoln: University of Nebraska Press, 1942), 83–89; Edson P. Rich, "Slavery in Nebraska," *Transactions and Reports of the Nebraska State Historical Society* (1887), 2:100.
43. W. W. Cox, "Reminiscences of Early Days in Nebraska," *Transactions and Reports of the Nebraska State Historical Society* (1893), 5:63–81. For slaves in Kansas, see Etcheson, *Bleeding Kansas*, 29–30; G. M. Lambertson, "The State as a Political Entity," in *Transactions and Reports of the Nebraska State Historical Society* (1892), 5:183–99; Tipton, *Forty Years of Nebraska,* 50–52; Morton and Watkins, *History of Nebraska,* 307; Luebke, *Nebraska,* 157.
44. E. H. Cowles, "Otoe County in Early Days," *Transactions and Reports of the Nebraska State Historical Society*, ed. Robert W. Furnas (1885), 1:37–42; Rich, "Slavery in Nebraska," 95.
45. Rich, "Slavery in Nebraska," 98–99. See also Morton and Watkins, *History of Nebraska,* 450–51.
46. Morton and Watkins, *History of Nebraska,* 454.
47. Morton and Watkins, *History of Nebraska,* 455.
48. Tipton, *Forty Years of Nebraska,* 50.
49. Thavenet, "Territorial Governorship," 403; Morton and Watkins, *History of Nebraska,* 453–55; and Etcheson, "Great Principle of Self-Government," 22–24.
50. Etcheson, *Bleeding Kansas*, 186.
51. S. F. Nuckolls to J. Sterling Morton, Feb. 5, 1860, in Morton Papers, roll 2.
52. James B. Potts, "North of 'Bleeding Kansas': The 1850s Political Crisis in Nebraska Territory," *Nebraska History* 73 (Fall 1992): 110.
53. Nicole Etcheson, "James H. Lane: Radical Conservative, Conservative Radical," in *John Brown to Bob Dole: Movers and Shakers in Kansas History*, ed. Virgil W. Dean (Lawrence: University Press of Kansas, 2006), 33–45; Etcheson, *Bleeding Kansas*, 247–53.
54. Morton and Watkins, *History of Nebraska,* 230, 449.
55. Rich, "Slavery in Nebraska," 96–97, 103; A. R. Keim, "John Brown in Richardson County," *Transactions and Reports of the Nebraska State Historical Society* (1887), 2:109–13; Eugene H. Berwanger, *The Frontier against Slavery: Western Anti-Negro Prejudice and the Slavery Extension Controversy* (Urbana: University

of Illinois Press, 1967), 120–22; Morton and Watkins, *History of Nebraska,* 307; Luebke, *Nebraska,* 157.

56. Olson, *History of Nebraska,* 128–30. See also Albert Watkins, "How Nebraska Was Brought into the Union," *Publications of the Nebraska State Historical Society* (1917), 18:375–434.
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59. Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (New York: Harper & Row, 1988), 223; Etcheson, *Bleeding Kansas,* 250.
60. "Territorial Pioneer Days: Speeches Made at the Annual Meeting of the Nebraska State Historical Society, January 15, 1902," *Proceedings and Collections of the Nebraska State Historical Society* (1907), 15:51.
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Appendix

AN ACT TO ORGANIZE THE TERRITORIES OF NEBRASKA AND KANSAS

Ch. 59, § 6, 10 Stat. 277 (1854)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit: beginning at a point in the Missouri River where the fortieth parallel of north latitude crosses the same; thence west on said parallel to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence on said summit northward to the forty-ninth parallel of north latitude; thence east on said parallel to the western boundary of the territory of Minnesota; thence southward on said boundary to the Missouri River; thence down the main channel of said river to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory Nebraska; and when admitted as a State or States, the said Territory or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of the admission: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such time as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States: *Provided further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits

or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Nebraska, until said tribe shall signify their assent to the President of the United States to be included within the said Territory of Nebraska, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed.

SEC. 2. *And be it further enacted*, That the executive power and authority in and over said Territory of Nebraska shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory, and shall be commander-in-chief of the militia thereof. He may grant pardons and respites for offences against the laws of said Territory, and reprieves for offences against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted*, That there shall be a Secretary of said Territory, who shall reside therein, and hold his office for five years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and journals of the Legislative Assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year to the President of the United States, and two copies of the laws to the President of the Senate and to the Speaker of the House of Representatives, to be deposited in the libraries of Congress, and

in case of the death, removal, resignation, or absence of the Governor from the Territory; the Secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the Governor during such vacancy or absence, or until another Governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. *And be it further enacted*, That the legislative power and authority of said Territory shall be vested in the Governor and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters, as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall, at its first session, consist of twenty-six members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. The number of representatives may be increased by the Legislative Assembly, from time to time, in proportion to the increase of qualified voters: *Provided*, That the whole number shall never exceed thirty-nine. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and representatives, giving to each section of the Territory representation in the ratio of its qualified voters as nearly as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of, the district or county, or counties for which they may be elected, respectively. Previous to the first election, the Governor shall cause a census, or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory, to be taken by such persons and in such mode as the Governor shall designate and appoint; and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the Governor shall appoint and direct; and he shall at the same

time declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts for members of the Council, shall be declared by the Governor to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives, shall be declared by the Governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the Legislative Assembly, the Governor shall order a new election; and the persons thus elected to the Legislative Assembly shall meet at such place and on such day as the Governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the Legislative Assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

SEC. 5. *And be it further enacted*, That every free white male inhabitant above the age of twenty-one years who shall be an actual resident of said Territory, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States and those who shall have declared on oath their intention to become such, and shall have taken an oath to support the Constitution of the United States and the provisions of this act: *And provided further*, That no officer, soldier, seaman, or marine, or other person

in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote or hold office in said Territory, by reason of being on service therein.

SEC. 6. *And be it further enacted*, That 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; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of nonresidents be taxed higher than the lands or other property of residents. Every bill which shall have passed the Council and House of Representatives of the said Territory shall, before it become a law, be presented to the Governor of the Territory; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Assembly, by adjournment, prevents its return, in which case it shall not be a law.

SEC. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the Governor and Legislative Assembly of the Territory of Nebraska. The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for; and in the first instance

the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the Legislative Assembly; and shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers.

SEC. 8. *And be it further enacted*, That no member of the Legislative Assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly; and no person holding a commission or appointment under the United States, except Postmasters, shall be a member of the Legislative Assembly, or hold any office under the government of said Territory.

SEC. 9. *And be it further enacted*, That the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace. The Supreme Court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually, and they shall hold their offices during the period of four years, and until their successor shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the Supreme Court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and districts courts, respectively, shall possess chancery as

well as common law jurisdiction. Each District Court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the Supreme Court, under such regulations as may be prescribed by law; but in no case removed to the Supreme Court shall trial by jury be allowed in said court. The Supreme Court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error, and appeals from the final decisions of said Supreme Court, shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; except only that in all cases involving title to slaves, the said writs of error, or appeals shall be allowed and decided by the said Supreme Court, without regard to the value of the matter, property, or title in controversy; and except also that a writ of error or appeal shall also be allowed to the Supreme Court of the United States, from the decision of the said Supreme Court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of *habeas corpus*, involving the question of personal freedom: *Provided*, that nothing herein contained shall be construed to apply to or affect the provisions to the " act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelfth, seventeen hundred and ninety-three, and the " act to amend and supplementary to the aforesaid act," approved September eighteen, eighteen hundred and fifty; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and Laws of the United States as is vested in the Circuit and District Courts of the United States; and the said Supreme and District Courts of the said Territory, and the respective judges

thereof, shall and may grant writs of *habeas corpus* in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws, and writs of error and appeal in all such cases shall be made to the Supreme Court of said Territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Utah Territory now receive for similar services.

SEC. 10. *And be it further enacted*, That the provisions of an act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelve, seventeen hundred and ninety-three, and the provisions of the act entitled " An act to amend, and supplementary to, the aforesaid act," approved September eighteen, eighteen hundred and fifty, be, and the same are hereby, declared to extend to and be in full force within the limits of said Territory of Nebraska.

SEC. 11. *And be it further enacted*, That there shall be appointed an Attorney for said Territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall receive the same fees and salary as the Attorney of the United States for the present Territory of Utah. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as Circuit and District Courts of the United States; he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees, as the Marshal of the District Court of the United States for the present Territory of Utah, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

SEC. 12. *And be it further enacted*, That the Governor, Secretary, Chief Justice, and Associate Justices, Attorney and Marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and a Secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the District Judge or some Justice of the Peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice, or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said Secretary among the Executive proceedings; and the Chief Justice and Associate Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some Judge or Justice of the Peace of the Territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of two thousand five hundred dollars. The Chief Justice and Associate Justices shall each receive an annual salary of two thousand dollars. The Secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the Treasury of the United States; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the Legislative Assembly shall be entitled to receive three dollars each per day during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually

travelled route; and an additional allowance of three dollars shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, a sergeant-at-arms, and doorkeeper, may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day, during the session of the Legislative Assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the legislature annually, unless, on an extraordinary occasion, the Governor shall think proper to call the legislature together. There shall be appropriated, annually, the usual sum, to be expended by the Governor, to defray the contingent expenses of the Territory, including the salary of a clerk of the Executive Department; and there shall also be appropriated, annually, a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses; and the Governor and Secretary of the Territory shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the Secretary of the Treasury of the United States, and shall, semi-annually, account to the said Secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said Legislative Assembly for objects not specially authorized by the acts of Congress, making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 13. *And be it further enacted*, That the Legislative Assembly of the Territory of Nebraska shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the Governor and Legislative Assembly shall proceed to locate and establish the seat of government for said Territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said Governor and Legislative Assembly.

SEC. 14. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives, but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and at all subsequent elections the times, places, and manner of holding the elections, shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected; and a certificate thereof shall be given accordingly. That the Constitution, and all Laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March sixth, eighteen hundred and twenty, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void; 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: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of sixth March, eighteen hundred and twenty, either protecting, establishing, prohibiting, or abolishing slavery.

SEC. 15. *And be it further enacted*, That there shall hereafter be appropriated, as has been customary for the Territorial govern-

ments, a sufficient amount, to be expended under the direction of the said Governor of the Territory of Nebraska, not exceeding the sums heretofore appropriated for similar objects, for the erection of suitable public buildings at the seat of government, and for the purchase of a library, to be kept at the seat of government for the use of the Governor, Legislative Assembly, Judges of the Supreme Court, Secretary, Marshal, and Attorney of said Territory, and such other persons, and under such regulations as shall be prescribed by law.

SEC. 16. *And be it further enacted*, That when the lands in the said Territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

SEC. 17. *And be it further enacted*, That, until otherwise provided by law, the Governor of said Territory may define the Judicial Districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts; and also appoint the times and places for holding courts in the several counties or subdivisions in each of said Judicial Districts by proclamation, to be issued by him; but the Legislative Assembly, at their first or any subsequent session, may organize, alter, or modify such Judicial Districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

SEC. 18. *And be it further enacted*, That all officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territory of Nebraska, who, by virtue of the provisions of any law now existing, or which may be enacted during the present Congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security, at

such time and place, and in such manner, as the Secretary of the Treasury may prescribe.

SEC. 19. *And be it further enacted*, That all that part of the Territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit, beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Kansas; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their Constitution may prescribe at the time of their admission: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States: *Provided further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Kansas, until said tribe shall signify their assent to the

President of the United States to be included within the said Territory of Kansas, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed.

SEC. 20. *And be it further enacted*, That the executive power and chin authority in and over said Territory of Kansas shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory, and shall be commander-in-chief of the militia thereof. He may grant pardons and respites for offences against the laws of said Territory, and reprieves for offences against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

SEC. 21. *And be it further enacted*, That there shall be a Secretary of said Territory, who shall reside therein, and hold his office for five years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his Executive Department; he shall transmit one copy of the laws and journals of the Legislative Assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the President of the United States, and two copies of the laws to the President of the Senate and to the Speaker of the House of Representatives, to be deposited in the libraries of Congress; and, in case of the death, removal, resignation, or absence of the Governor from the Territory, the Secretary shall be, and he is hereby, authorized and required to execute and perform

all the powers and duties of the Governor during such vacancy or absence, or until another Governor shall be duly appointed and qualified to fill such vacancy.

SEC. 22. *And be it further enacted*, That the legislative power and authority of said Territory shall be vested in the Governor and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters, as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall, at its first session, consist of twenty-six members possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. The number of representatives may be increased by the Legislative Assembly, from time to time, in proportion to the increase of qualified voters: *Provided*, That the whole number shall never exceed thirty-nine. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its qualified voters as nearly as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of, the district or county, or counties, for which they may be elected, respectively. Previous to the first election, the Governor shall cause a census, or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory, to be taken by such persons and in such mode as the Governor shall designate and appoint; and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the Governor shall appoint and direct; and he shall at the same time declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest num-

ber of legal votes in each of said Council Districts for members of the Council, shall be declared by the Governor to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives, shall be declared by the Governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case of a vacancy shall otherwise occur in either branch of the Legislative Assembly, the Governor shall order a new election; and the persons thus elected to the Legislative Assembly shall meet at such place and on such day as the Governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the Legislative Assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

SEC. 23. *And be it further enacted*, That every free white male inhabitant above the age of twenty-one years, who shall be an actual resident of said Territory, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the Constitution of the United States and the provisions of this act: *And, provided further*, That no officer, soldier, seaman, or marine, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote or hold office in said Territory by reason of being on service therein.

SEC. 24. *And be it further enacted*, That 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; but no law shall be passed interfering with the primary disposa1 of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of nonresidents be taxed higher than the lands or other properly of residents. Every bill which shall have passed the Council and House of Representatives of the said Territory shall, before it become a law, be presented to the Governor of the Territory; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which, it shall likewise be reconsidered, and, if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house, respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Assembly, by adjournment, prevent its return, in which case it shall not be a law.

SEC. 25. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected as the case may be, in such manner as shall be provided by the Governor and Legislative Assembly of the Territory of Kansas. The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for; and, in the first instance, the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the Legislative Assembly; and shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers.

SEC. 26. *And be it further enacted*, That no member of the Legislative Assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the Legislative Assembly, or shall hold any office under the government of said Territory.

SEC. 27. *And be it further enacted*, That the judicial power of said Territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The Supreme Court shall Consist of chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the Supreme Court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each District Court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals shall be allowed in all cases from the final decisions of said

district courts to the Supreme Court, under such regulations as may be prescribed by law; but in no case removed to the Supreme Court shall trial by jury be allowed in said court. The Supreme Court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; except only that in all cases involving title to slaves, the said writ of error or appeals shall be allowed and decided by said supreme court, without regard to the value of the matter, property, or title in controversy; and except also that a writ of error or appeal shall also be allowed to the Supreme Court of the United States, from the decision of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of *habeas corpus*, involving the question of personal freedom: *Provided*, That nothing herein contained shall be construed to apply to or affect the provisions of the " act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelfth, seventeen hundred and ninety-three, and the " act to amend and supplementary to the aforesaid act," approved September eighteenth, eighteen hundred and fifty; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the Circuit and District Courts of the United States; and the said supreme and district courts of the said Territory, and the respective judges thereof, shall and may grant writs of *habeas corpus* in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as may be necessary, shall be appropriated to the trial of causes

arising under the said Constitution and laws, and writs of error and appeal in all such cases shall be made to the Supreme Court of said Territory, the same as in other cases. The said clerk shall receive the same fees in all such cases, which the clerks of the district courts of Utah Territory now receive for similar services.

SEC. 28. *And be it further enacted*, That the provisions of the act entitled "An act respecting fugitives from justice, and persons escaping from, the service of their masters," approved February twelfth, seventeen hundred and ninety-three, and the provisions of the act entitled "An act to amend, and supplementary to, the aforesaid act," approved September eighteenth, eighteen hundred and fifty, be, and the same are hereby, declared to extend to and be in full force within the limits of the said Territory of Kansas.

SEC. 29. *And be it further enacted*, That there shall be appointed an attorney for said Territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall receive the same fees and salary as the Attorney of the United States for the present Territory of Utah. There shall also be a marshal for the Territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as Circuit and District Courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the Marshal of the District Court of the United States for the present Territory of Utah, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

SEC. 30. *And be it further enacted*, That the Governor, Secretary, Chief Justice, and Associate Justices, Attorney, and Marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Gov-

ernor and Secretary to be appointed as aforesaid shall, before they act as such, respectively take an oath or affirmation before the district judge or some justice of the peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the Chief Justice and Associate Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some Judge or Justice of the Peace of the Territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of two thousand five hundred dollars. The Chief Justice and Associate Justices shall receive as an annual salary of two thousand dollars. The Secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the Treasury of the United States; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the Legislative Assembly shall be entitled to receive three dollars each per day during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually travelled route; and an additional allowance of three dollars shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, a sergeant-at-arms, and door-keeper, may be chosen for

each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day, during the session of the Legislative Assembly; but no to other officers shall be paid by the United States: *Provided*, That there shall be but one session of the Legislature annually, unless, on an extraordinary occasion, the Governor shall think proper to call the Legislature together. There shall be appropriated, annually, the usual sum, to be expended by the Governor, to defray the contingent expenses of the Territory, including the salary of a clerk of the Executive Department and there shall also be appropriated, annually, a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses; and the Governor and Secretary of the Territory shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the secretary of the Treasury of the United States, and shall, semi-annually, account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said Legislative Assembly for objects not specially authorized by the acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 31. *And be it further enacted*, That the seat of government of said Territory is hereby located temporarily at Fort Leavenworth; and that such portions of the public buildings as may not be actually used and needed for military purposes, may be occupied and used, under the direction of the Governor and Legislative Assembly, for such public purposes as may be required under the provisions of this act.

SEC. 32. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly,

who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives, but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly. That the Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Kansas as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March sixth, eighteen hundred and twenty, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void; 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: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of sixth of March, eighteen hundred and twenty, either protecting, establishing, prohibiting, or abolishing slavery.

SEC. 33. *And be it further enacted*, That there shall hereafter be appropriated, as has been customary for the territorial governments, a sufficient amount, to be expended under the direction of the said Governor of the Territory of Kansas, not exceeding the sums heretofore appropriated for similar objects, for the erection of suitable public buildings at the seat of government, and for

the purchase of a library, to be kept at the seat of government for the use of the Governor, Legislative Assembly, Judges of the Supreme Court, Secretary, Marshal, and Attorney of said Territory, and such other persons, and under such regulations, as shall be prescribed by law.

SEC. 34. *And be it further enacted*, That when the lands in the said Territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

SEC. 35. *And be it further enacted*, That, until otherwise provided by law, the Governor of said Territory may define the Judicial Districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts; and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation, to be issued by him; but the Legislative Assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts as to them shall seem proper and convenient.

SEC. 36. *And be it further enacted*, That all officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territory of Kansas, who, by virtue of the provisions of any law now existing, or which may be enacted during the present Congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security, at such time and place, and in such manner as the Secretary of the Treasury may prescribe.

SEC. 37. *And be it further enacted*, That all treaties, laws, and other, engagements made by the government of the United States with

the Indian tribes inhabiting the territories embraced within this act, shall be faithfully and rigidly observed, notwithstanding any thing contained in this act; and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the President of the United States may, at his discretion, change the location of the office of superintendent.

Approved, May 30, 1854.

Contributors

Nicole Etcheson is Alexander M. Bracken Professor of American History at Ball State University. She is the author of the acclaimed *Bleeding Kansas: Contested Liberty in the Civil War Era* (2004) and *The Emerging Midwest: Upland Southerners and the Political Culture of the Old Northwest* (1996). She has also written numerous essays, most recently "The Great Principle of Self-Government: Popular Sovereignty and Bleeding Kansas," in *Kansas History* 27 (Spring/Summer 2004): 14–29.

Tekla Ali Johnson is assistant professor of history at Johnson C. Smith University. She is a recent PhD from the University of Nebraska–Lincoln (2005), where she wrote a dissertation, "An Intellectual and Political Biography of Nebraska State Senator Ernest Chambers: Activist, Statesman, and Humanist, 1937–1988." She is also the coauthor of an essay about Frederick Douglass and his connections to Nebraska.

Mark E. Neely Jr. is McCabe-Greer Professor of Civil War History at Pennsylvania State University. He has written several books. *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (1991) received the Pulitzer Prize for History and the National Historical Society's Bell I. Wiley Prize. *The Last Best Hope of Earth: Abraham Lincoln and the Promise of America* (1993) received the Alpha Sigma Nu Book Award. His most recent book is *The Union Divided: Party Conflict in the Civil War North* (2002).

Phillip S. Paludan was Naomi B. Lynn Distinguished Professor of Lincoln Studies at the University of Illinois at Springfield. He is the author of seven books, including the pathbreaking *Victims: A True Story of the Civil War* (1981) and *A People's Contest: The Union and the Civil War, 1861–1865* (1996). *The Presidency of Abraham Lincoln* (1994) received the annual Lincoln Prize.

James A. Rawley was Carl A. Happold Distinguished Emeritus Professor of History at the University of Nebraska–Lincoln. He authored numerous books and essays, most notably *Turning Points of the Civil War* (1966), *Race & Politics: "Bleeding Kansas" and the Coming of the Civil War* (1969), *Abraham Lincoln and a Nation Worth Fighting For* (1996), and *London: Metropolis of the Slave Trade* (2003). Two other books, *A Lincoln Dialogue* and *New Turning Points of the Civil War*, were in press with the University of Nebraska Press at the time of his death in 2005.

Brenden Rensink earned a bachelor's degree in history from Brigham Young University in 2004 and a master's degree in history from the University of Nebraska–Lincoln in 2006. His thesis is entitled "Native American History, Comparative Genocide, and the Holocaust: Historiography, Debate, and Critical Analysis." He continues to study Native American history and the American West as a PhD student at the University of Nebraska–Lincoln.

Joann M. Ross is a faculty member at the Louisiana School for Math, Science, and the Arts. She earned a doctor of jurisprudence from the University of Nebraska College of Law in 2003. She is a PhD candidate in history at the University of Nebraska–Lincoln, specializing in social and urban history with an emphasis on legal history. She was co-author of "Jury Nullification: A Selective, Annotated Bibliography," published by the *Valparaiso University Law Review* (2004).

Walter C. Rucker is associate professor of African American and African Studies at Ohio State University. He is the author of *"The River Flows On": Black Resistance, Culture, and Identity Formation in Early America* (2005) and several essays, including "'A Negro Nation within the Nation': W.E.B. Du Bois and the Creation of a Revolutionary Pan-Africanist Tradition," in *Black Scholar* (2002).

John R. Wunder is professor of history and journalism at the University of Nebraska–Lincoln and docent in North American studies at the Renvall Institute of the University of Helsinki. He has written and edited numerous histories, two recent books being *Nebraska Moments* (2007), with Susan A. Wunder and Donald R. Hickey, and *Americans View Their Dust Bowl Experience,* edited with Frances W. Kaye and Vernon Carstensen (1999, 2002). He is also editor of Plains Histories, a new book series with Texas Tech University Press.

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