Morton's History of Nebraska

Authentic—1400 to 1906—Complete

CHAPTER V CONTINUED (13)

In reply to this objection, Mr. Hall of Missouri, who was an ardent lieutenant of Douglas and Richardson in their enterprise, said that a tract forty miles wide and three hundred miles long, running along the border of Missouri, had been set aside for the Indians by treaty and was occupied by twelve thousand to fourteen thousand of them; a strip of a out the same extent, called neutral, was not occupied; as to the rest of the territory it was in the same situation as that of Oregon, Utah, Wisconsin, Minnesota and Iowa when they were organized. Mr. Hall said that by the act of 1834 all the territory west of the Mississippi river, except the states of Missouri and Louisiana and the territory of Arkansas, was erected into what was called Indian territory. Under the operation of that law our people were not permitted to enter that territory at all without a license from the executive of the government or his agent. As a result the occupants were limited to about five hundred licensed persons, and yet as many as fifty or sixty thousand people passed through this country annually on the way to Oregon, California, Utah and New Mexico, under the protection of no law, and murders and other crimes were perpetrated. If we desired to protect this travel we must organize the territory and extinguish the Indian title. When Mr. Brooks insisted that this was the first time that a territorial bill had ever been introduced to establish government over territory to which the Indian title had not been extinguished in any part and over a people who do not exist there, Phelps, Richardson and Hall held out that the Indian title had not been extinguished in any of the territories when they were organized. Brooks persisted in his demand to know the population of the proposed territory, and Richardson replied that it was not over one thousand two hundred.

Mr. Howe (Pennsylvania) taunted Joshua Giddings on neglecting to insert the anti-slavery provision of the Ordinance of 1787 in the bill, and wanted to know if it was on account of the national party platforms of 1852, which had dodged the slavery question. Giddings retorted by reading the restriction of the Missouri compromise and said: "This law stands perpetually, and I did not think that this act would receive any increased validity by a re-enactment. . . . It is very clear that the territory included in that treaty must be forever free unless the law be repealed."

When asked by Mr. Howe if he did not remember a compromise since that time (1850), Giddings replied that it did not affect this question; and, illustrating the then temperate spirit of anti-slavery statesmen, Mr. Giddings added, "I am not in the habit of agitating these questions of slavery unless drawn into it."

When Sweetzer (Ohio) moved to strike out the part of the bill which provided for the making of treaties with Indians to extinguish their title, because it was time "to let the country know that it is our policy to plunder these people; not make a mockery anew by the pretense of a treaty," Hall protested that while Sweetzer might be correct in holding that the Indians should be incorporated as citizens, yet a territory large enough for two or three large states should not be given up to ten or twelve thousand Indians. He thought a portion of the territory had been secured by treaty with the Kansas Indians, but that so far there was no controversy between the Indians and the government. Mr. Howard said that the treaty of 1825 had given the Ohio and Missouri Shawnees fifty miles square, and the Kansas Indians had also selected a tract of the same area on the Missouri river under treaty.

Howard (Texas) said the territory had 340,000 square miles and not over six hundred white people, that the bill violated treaties with eighteen tribes who had been moved west of the Mississippi river, to whom the government had guaranteed that they should never be included in any state or territory. Monroe had begun this policy in 1825, and Jackson had matured and carried it out under the act of 1830. The Indians, he said, would be surrounded by the white men's government, which would force them to come under the jurisdiction of white men's laws or suffer their tribal organization to be destroyed. There would be no country left for other tribes east of the Rocky mountains and west of the Mississippi river. It was Great Britain's policy to concede to Indians the right to occupancy but not to the fee, while Spain conceded neither. Hall then charged Howard with the design of settling the Comanches and other wild tribes of Texas in Nebraska territory, which would drive the overland routes from Missouri and Iowa to Texas; and he urged that,

"If in course of time a great railroad should be found necessary from this part of the continent to the shore of the Pacific, and the doctrine prevails that all the terrtiory west of the Missouri river is to be a wilderness from this day, henceforth and forever, Texas being settled, this country will have no alternative but to make the Pacific road terminate at Galveston or some other point in Texas."

Mr. Hall insisted that Howard's argument meant that "we should never settle Nebraska at all," and that white settlement must be extended to the mountains to keep in touch with California and Oregon for the protection of the Union and of travel across the plains. He nuoted from Medill, the late commissioner of Indian affairs, who urged that the Omahas, "Ottoes" and "Missourias" be moved so as to be with the Osages and "Kanzas" because they were circumscribed in hunting by the Pawnees and Sioux and often attacked and murdered by the tribe last named.

"The Pawnees all should be removed north of the Platte, and the Sioux of the Missouri restrained from coming south of that river, so that there would be a wide and safe passage for our Oregon emigrants and for such of those to California as may prefer to take that route, which, I am informed, will probably be the case with many."

Howard argued that we should negotiate with the Indians before violating our treaties with them by organizing a territorial government over lands which they occupied. To the objections of Clingman (North Carolina) that there were only from six hundred to nine hundred nhabitants in the proposed territory, Hall replied that it was because the law prevented a white man from settling there, "and if he does a company of dragoons will run him out." There would be thirty thousand or forty thousand people there within three or four months after there was a territorial organization to protect them. The southern line went down to 36° 30', he explained, because the route from Missouri to New Mexico crossed that line, and that travel must be protected.

Sutherland (New York), imbued with the characteristic spirit of the Northeast, and especially of New England, in relation to western expansion, argued that it was bad policy to take in more lands and encourage emigration from the states which were still so largely unoccupied. The eleven landed states, as he called them, of Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri and Wisconsin had 137,000,000 acres of unimproved lands in the hands of private owners and 200,000,000 acres of public lands. Richardson retorted that this was the argument of Fisher Ames over again, and charged the eastern members with fear of opening the better lands of the West in competition with their own. He thought the best way was to give the people a chance to make their own choice.

The Senate committee on territories was composed of Douglas, Johnson of Arkansas, Jones of Iowa, Houston or Texas, democrats, and Bell and Everett, whigs. Douglas dominated the committee. The three members last named were opposed to the Nebraska bill. On the 17th of February Douglas reported the bill as it came from the House without amendment, and March 2 he tried to get it up for consideration, and complained that for two years the Senate had refused to hear a territorial bill. Rusk of Texas bitterly opposed the bill, and said that its passage would "drive the Indians back on us," and it failed of consideration by a vote of twenty to twenty-five, all but five of those opposed—including two from Delaware—being of the South. Of the southern senators only the two from Missouri favored the bill.

Senator Atchison's remarks on the 3d of March are notable as a remarkable contribution to the theory of the inviolability of the Missouri compromise, and also as being the only serious reference in the whole debate to the slavery question. In the early part of the session he had seen two objections to the bill, namely, the fact that the title of the Indians had not been extinguished and the Missouri compromise. It was very clear to him that the law of Congress passed when Missouri was admitted into the Union, excluding slavery from the territory of Louisiana north of 36° 30', would be enforced in that territory unless it was specially rescinded, and, whether constitutional or not, would do its work, and that work would preclude slaveholders from going into that territory. But when he came to look into the question he saw no prospect of the repeal of the Missouri compromise. But for this he would oppose organization of the territory unless his constituency and all people of the South could go into it carrying their slaves with them. But he had no hope that the restriction would ever be repealed. The first great error in the political history of the country was the Ordinance of 1787, making the Northwest territory free; the second was the Missouri compromise. He did not like the competition in agriculture with his own state which would follow the organization of the territory, but population would go into every habitable part of the territory in a very few years in defiance of the government, so it might as well be let in now.

Houston made a flamboyant speech against the bill, entirely devoted to the wrongs of the Indians which its passage would involve, and Bell (Tennessee) spoke along the same line, and urged that there was no necessity for territorial organization. Douglas closed the debate showing that the provisions of the bill did not include the land of any Indian tribe without their consent (it had been so amended in the House), and he said, "It is an act very dear to my heart." He had presented a bill eight years before in the House and had been pressing it ever since. But on the 3d of March the motion to take up the bill was laid on the table by a vote of twenty-three to seventeen, and it was never revived in that form.

The debate, especially that of the House, discloses that the border states north and south were fighting for advantage in the traffic to the Pacific coast and in the location of the then somewhat dimly prospective Pacific railway. This real objection to the measure on the part of the southern states seems to have been largely veiled by an ostensibly very philanthropic regard for the fate of the Indian; but it seems scarcely possible that finesse could have been so adroitly spun and spread so far as to have concealed the consideration of the admission of more free territory as the real objection on the part of the South. On the other hand, the prompt report which Douglas made from his committee early in the next session of Congress, recommending the squatter sovereignty compromise, indicates that he had discovered not only that the South, in part at least, had decided to press the slavery objection, but the way to meet it—unless indeed this compromise was a gratuitous sop thrown to the South as a bid for its favor to his political fortunes. In a speech at Atchison during the vacation, September 24, 1854, Senator Atchison, in a bibulous burst of confidence, said that he had forced Douglas to change his tactics and adopt the compromise. While this claim shames the wily senator's frank disclaimer at the last session, alluded to above, it is entirely consistent with his leadership in the subsequent attempt to make the most of the compromise by forcing Kansas into the Union as a slave state.

At a meeting, in Platte county, Missouri, Atchison spoke in the same vein. The sentiment and determination of the western border Missourians whom he represented were expressed in the following declaration: "Resolved, that if the territory shall be opened to settlement we pledge ourselves to each other to extend the institutions of Missouri over the territory, at whatever cost of blood or treasure." There was a very large slave population in these border counties, amounting, it is said, to as many as seventeen thousand, and the fears freely expressed by Atchison and others that this property, and so the system under which it was held, would be seriously menaced if the immediately adjoining territory of Kansas should be made free, were no doubt well founded. And yet solicitude about this matter seems to have been confined to a few, and there is evidence that nidifference was the rule rather than the exception. This is illustrated by the fact that the members of the House of Representatives from Missouri left to the members of Congress of Iowa to insist on the division of the territory.

The sweeping dictum that, "Douglas was a man of too much independence to suffer the dictation of Atchison, Toombs or Stephens," is rather beside the question, and seems to be virtually contradicted by its author when he shows how readily Douglas yielded to the radical and momentous amendment of Dixon, a lesser man than either of the three above named, for the total repeal of the Missouri restriction, when Douglas spoke "in an earnest and touching manner," so that "it was a pretty comedy. The words of Douglas were those of a self-denying atriot, and not those of a man who was sacrificing the peace of his country, and, as it turned out, the success of his party, to his own personal ambition."

Early in the session of the next Congress, December 14, 1853, Senator Dodge of Iowa, apparently acting in concert with the committee on territories of which Douglas was chairman, introduced a bill to organize the territory of Nebraska which should comprise "all that part of the territory of the United States included between the summit of the Rocky mountains on the west, the states of Missouri and Iowa on the east, the 43° 30′ of north latitude on the north, and the territory of New Mexico and the parallel of 36° 30′ north latitude on the south." This bill contained no reference to slavery. "The simple bill which Dodge introduced had undergone very important changes," said Chase, in asking for more time to consider the committee's substitute.

On the 4th of January following, the committee on territories, through Douglas, reported the bill of Dodge in the form of a substitute, in which the proposed territory embraced all that part of the territory of Minnesota which lay between the Mississippi river on the east and the northern boundary of Iowa and the Missouri and White Earth rivers on the south and west; and Ft. Leavenworth, then a military station, was designated as the capital. A leading historian commits the error of including within this proposed territory of Nebraska the area now comprised in the states of Kansas, Nebraska, the Dakotas, Montana and part of Colorado and Wyoming, which "contained 485,000 square miles, a territory larger by thirty-three thousand square miles than all the free states in the Union east of the Rocky mountains." That larger part of the Dakotas lying east of the Missouri, however, belonged to Minnesota, and a corner of Wyoming was not included in "the purchase." But the area in square miles as given is approximately correct.

The committee's bill contained the compromise provision of the Utah and New Mexico bills, that the territory of Nebraska or any portion of the same when admitted as a state or states "shall be received into the Union with or without slavery as their constitution may prescribe at the time of their admission." Accompanying the bill was a formal report in which Douglas explained why the provisions relating to slavery were inserted. He points out that "eminent statesmen hold that Congress is invested with no rightful authority to legislate upon the subject of slavery in the territories, and that therefore the eighth section of the Missouri compromise is null and void"; while "the prevailing sentiment in large sections of the Union sustains the doctrine that the Constitution of the United States secures to every citizen an inalienable right to move into any of the territories with his property of whatever kind and description and to hold and enjoy the same under the sanction of law. . . Under this section, as in the case of the Mexican law in New Mexico and Utah, it is a disputed point whether slavery is prohibited in the new country by valid enactment. As Congress deemed it wise and prudent to refrain from deciding the matters in controversy then (1850) either by affirming or repealing the Mexican laws or by an act declaratory of the true intent of the constitution and the extent of the protection afforded by it to slave property in the territories, your committee are not prepared now to recommend a departure from the course pursued on that memorable occasion either by affirming or repealing the eighth section of the Missouri act, or by any act declaratory of the meaning of the constitution in respect to the legal points in dispute."

After the bill was reported it was amended by the addition of the concluding part of the committee's report, which was declaratory of the meaning of the compromise of 1850, as follows:

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

"Second—That 'all cases involving title to slaves' and 'questions of personal freedom' are to be referred to the jurisdiction of the local tribunals, with the right of appeal to the Supreme Court of the United States.

"Third—That the provision of the Constitution of the United States in respect to fugitives from service is to be carried into faithful execution in all 'the organized territories' the same as in the states."

On the 16th day of January Dixon of Kentucky fortified the indirect setting aside of the Missouri compromise by the popular sovereignty provision of the bill by moving an amendment explicitly repealing the anti-slavery clause of the compromise. If it is true that "the Senate was astonished and Douglas was startled" their emotions must have been due to being brought face to face with the spectacular plainness of the meaning of the indirect repeal already incorporated in the bill. The popular sovereignty clause of the Nebraska bill was absolutely inconsistent with the Missouri restriction and applied to all the territory affected by it except the part of the Dakotas lying east of the Missouri river, and which would be hopelessly anti-slavery under the popular choice. Moreover, this very area had been embraced in the territory of Wisconsin by the act of 1836, in which was incorporated the slavery interdiction of the Ordinance of 1787; and this interdiction seems to have been passed on when the territory fell to Minnesota in 1849, where it remained when the Missouri compromise was repealed by the Kansas-Nebraska act. It seems still less accurate, or still more misleading, in the attempt to exaggerate the importance of the formal repeal of the Missouri compromise, to say, touching Douglas' 4th of January bill, that, "The South was insulted by the pretense of legalizing slavery in territory already by the Missouri compromise preempted for freedom"; for the report of Douglas "closed with a proposition which certainly set it (the compromise) aside"; and this very proposition was appended to the 4th of January bill.

Nor is the ground for the statement that, "So long as the Missouri compromise remained the law of the land slavery could have no legal recognition in Nebraska while it was yet a territory" discoverable; for the 4th of January bill provided, as we have seen, "That all questions pertaining to slavery in the territories . . . are to be left to the decision of the people residing therein." Eastern writers seem to have conceived it to be an a priori virtue to be offended at the virile strenuosity of this remarkable western leader, and they seem to write under the compulsion of arriving at the conclusion that "in the view of Douglas moral ideas had no place in politics." For the great part which Clay played in the compromise of 1850 there is palliation where there is not praise, and we are told that it is probable that "the matured historical view will be that Webster's position as to the application of the Wilmot proviso was statesmanship of the highest order." Though Clay, like Webster, was a constant candidate for the presidency, and bore a potent part in the two great compromises with slavery aggression, which were bitterly assailed by anti-slavery sentiment, he is awarded the meed of patriotic motive and achievement, while the similar action of Douglas is written down as a mere "bid for southern support in the next democratic convention." By a sort of pneumatic method he is summarily rejected from the company of respectable statesmen, or politicians even, with the brand of "Stephen Arnold Douglas—with accent on that second name."

This last is a good example of the over-working of a bias, a predilection or a tortured emotion which one almost expects of the author. Another historian is fairer in describing the great 3d of March speech:

"The appearance of Douglas was striking. Though very short in stature, he had an enormous head, and when he rose to take arms against a sea of troubles which opposed him he was the very picture of intellectual force. Always a splendid fighter, he seemed this night like a gladiator who contended against great odds; for while he was backed by thirty-seven senators, among his opponents were the ablest men of the Senate, and their arguments must be answered if he expected to ride out the storm which had been raised against him. Never in the United States, in the arena of debates had a bad cause been more splendidly advocated; never more effectively was the worse made to appear the better reason."

These estimates of the author of Nebraska's political beginning by standard historians of today seem pertinent here as affording the latest and thus far the best view of his character and of his motives in the prologue to the great national tragedy which followed the Nebraska contest. But they also indicate that a remove of a single generation from the culminating scenes of the struggle over slavery does not serve entirely to separate the northern writer from northern prejudice and partisanship. The serious charge against Douglas is that he initiated the Nebraska bill, which grew into the Kansas-Nebraska act, including the repeal of the Missouri compromise, of his own volition, and, by so doing, to ingratiate himself with the South for the selfish furtherance of his presidential ambition, he deliberately disturbed the repose which had been established by the compromise of 1850, and which President Pierce had promised in his late message should "suffer no shock during my official term, if I have power to prevent it." There is much reason for believing that Douglas was aware that southern politicians would press for adherence to the principles of the latest compromise, and that, instead of accepting it in the way of a compromise, as Clay or Webster would have done, at an earlier time, by his imperious method he took the lead and pressed what he saw was a necessary concession as a positive measure of his own. Moreover, the debate shows that the question whether Douglas acted in bad faith in reference to the Missouri compromise at least remained an open one, and with the technical or formal advantage with Douglas. In his speech in the Senate, February 29, 1860, he said:

"It was the defeat in the House of Representatives of the enactment of the bill to extend the Missouri compromise to the Pacific ocean, after it had passed the Senate on my own motion, that opened the controversy of 1850, which was terminated by the adoption of the measures of that year. . . . Both parties in 1852 pledged themselves to abide by that principle, and thus stood pledged not to prohibit slavery in the territories. The whig party affirmed that pledge and so did the democracy. In 1854 we only carried out, in the Kansas-Nebraska act, the same principle that had been affirmed in the compromise measures of 1850. I repeat that their resistance to carrying out in good faith the settlement of 1820, their defeat of the bill for extending it to the Pacific ocean, was the sole cause of the agitation of 1850, and gave rise to the necessity of establishing the principle of non-intervention by Congress with slavery in the territories."

And in his famous speech of March 3, 1854, he silenced Chase and Seward on this point by showing that, after the Missouri compact of 1820 was made, the northern vote in Congress still kept that state out of the Union and forced Mr. Clay's new conditions of 1821; that a like northern vote was recorded against admitting Arkansas with slavery in 1836, and that the legislature of Mr. Seward's state (New York), after the Missouri act of 1820, had instructed her members of Congress to vote against the admission of any territory as a state with slavery.

Mr. Douglas at least went far toward establishing the consistency of his action in 1854 by quoting from his speech in Chicago in 1850: "These measures (of 1850) are predicated on the great fundamental principle that every people ought to possess the right of regulating their own internal concerns and domestic institutions in their own way."

(To be Continued)