

## Beyond the Balance Rule

*Congress, Statehood, and Slavery, 1850–1859*

IN FEBRUARY 1859 the U.S. House of Representatives voted on S. 239, an Act to Admit Oregon to the Union, which had passed the Senate the previous March by a vote of 35 to 17.<sup>1</sup> At the time of the vote, members of the House knew one crucial piece of information: Oregon was going to be a free state.<sup>2</sup> As part of the referendum on their new constitution in November 1857 and in accordance with the general principles of the Kansas-Nebraska Act, voters in the Oregon Territory had been given a choice on slavery in the future state, and had chosen to be a free state by a vote of 7,727 (75 percent) to 2,645 (25 percent).<sup>3</sup> The admission vote in the House was close, 114 in favor and 103 against. Two days later, President Buchanan signed the bill and Oregon became the thirty-third state.<sup>4</sup>

If you knew nothing about the admission vote, but you knew something about slavery, the balance rule, and politics of the antebellum era, you might assume that the Oregon admission vote was on sectional lines, with north-

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<sup>1</sup>*Senate Journal*, 35th Cong., 1st sess., May 18, 1858, p. 477.

<sup>2</sup>The Senate knew the same at the time of their vote, the previous March.

<sup>3</sup>Voters were given separate choices on the ballot in which one question asked them to approve or disapprove of the proposed constitution and a second question asked them to vote for or against slavery. The constitution was approved by a similar vote to the slave vote, 7,195 (69%) to 3,215 (31%). A third question on the ballot asked about voting and residency rights of free blacks, and this vote was soundly defeated, 8,640 (89%) against and 1,081 (11%) in favor. See Charles H. Carey, "The Creation of Oregon as a State," *Oregon Historical Quarterly* 26 (1925): 281; Grupo de Investigadores Puertorriqueños, *Breakthrough from Colonialism: An Interdisciplinary Study of Statehood*, 1st ed., 2 vols. (Río Piedras, Puerto Rico, 1984); Earl S. Pomeroy, *The Pacific Slope: A History of California, Oregon, Washington, Idaho, Utah, and Nevada* (Seattle, 1973).

<sup>4</sup>11 *Stat.* 383 (1859).

ern representatives supporting it and southern representatives opposing it. You might further conjecture that Republicans were most supportive, southern Democrats most opposed, and northern Democrats mostly supportive, with anti-Lecompton Democrats perhaps more supportive than pro-Lecompton Democrats. You might also assume that a slave state also was awaiting admission.

On all these counts, you would be wrong. The actual vote was: northern members, 73–71 *against* admission, southern members 42–18 *in favor* of admission. The party breakdown was: northern Democrats 56–2 in favor, southern Democrats 42–18 *in favor*, and Republicans 71–15 *against* admission.<sup>5</sup> Heading into the final months of the slave crisis, the southern Democrats defeated the Republicans so that they could *bring a free state into the Union*. The admission also furthered the sectional skew in the Senate: Oregon became the eighteenth free state, and fifteen slave states were in existence. Additionally, its admission came on the heels of the admission of another free state, Minnesota (spring 1858), and the defeat of admission for a slave state, the Kansas Territory, at approximately the same time.<sup>6</sup> No plausible slave state was awaiting admission.

This story illustrates how the so-called balance rule—the informal mechanism of admitting states in pairs, one slave and one free, as a mechanism of maintaining sectional harmony between the North and the South in the U.S. Senate—is an incomplete analytical explanation for the politics of state admissions. In the case of the Oregon Territory, it has almost no explanatory power. There was only one state being considered for admission, the vote positions of the congressional factions cut directly against their positions in the slave crisis, and the admission did absolutely nothing to restore the balance of power in the Senate.

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<sup>5</sup>*House Journal*, 35th Cong., 2d sess., 1859, pp. 398–99. See also Nolan McCarty, Keith Poole, and Howard Rosenthal, “Congress and the Territorial Expansion of the United States,” in *Party, Process, and Political Change: New Perspectives on the History of Congress*, ed. David W. Brady and Mathew D. McCubbins (Stanford, Calif., 2002).

<sup>6</sup>The Kansas Territory was the only plausible place left to carve out a legitimate slave state, but it had soundly defeated its own admission by rejecting the English Bill Constitution in August 1858, in the final moments of the five-year drama that was the Kansas-Nebraska Act and the Lecompton Constitution. While it is plausible that the Senate, which voted on Oregon before the defeat of the Kansas Constitution, thought that Kansas would be admitted along with Oregon, it is highly unlikely. It was not possible in the House, whose vote took place after the defeat of the English Bill Constitution. See David M. Potter, *The Impending Crisis, 1848–1861*, completed and ed. Don E. Fehrenbacher (New York, 1976).

This chapter examines the balance rule within the larger framework of statehood politics in the antebellum era. It argues that the congressional politics of Oregon's admission are best understood by a wider conception of the balance rule. After a brief review of the balance rule theory, the remainder of the essay considers four features of statehood politics that revise our understanding of the relationship between Congress, statehood, slavery, and admission politics. By employing a more textured analytical assessment of statehood politics, a better understanding of both the balance rule and the admissions politics of the 1850s becomes possible.

## The Balance Rule

The balance rule is a relatively well known analytical thesis that explains how state admissions were politically negotiated during the antebellum era. It has three tenets. First, states are admitted to the Union in pairs (or on an alternating basis). Second, the paired admissions are done on the basis of the status of slavery in the new states, with the admission of one free state and one slave. Third, the pairing is done to ensure that the balance of power in the Senate remains unchanged. By balancing slave- and free-state admissions to the Union, neither section can gain a majority in the Senate, and thus neither proslavery nor antislavery policies can dominate Congress.

This logic is so well accepted that most high school history textbooks feature it, usually during a discussion of the Missouri Compromise or the Compromise of 1850. For instance, James West Davidson writes, under the heading "The Missouri Question,"

The admission of Missouri would upset the balance of power in the Senate. In 1819, there were 11 free states and 11 slave states. Each state had two senators. If Missouri became a slave state, the South would have a majority in the Senate. Determined not to lose power, northerners fought against letting Missouri enter as a slave state. . . . Finally, Senator Henry Clay proposed a compromise . . . admitting Missouri as a slave state and Maine as a free state.<sup>7</sup>

Similarly, academic writing comes to the same conclusion. Barry Weingast has written,

<sup>7</sup>James West Davidson and Michael B. Stoff, *The American Nation* (Needham, Mass., 1995), p. 428.

Made explicit during the Missouri Compromise, the balance rule had two components. It held, first, that the North and South would have an equal number of states, and, second, that slave and free states would be admitted in pairs. Sectional balance afforded each section a veto in the Senate, allowing each to prevent the adoption of national policies they deemed onerous.<sup>8</sup>

The balance rule thesis explains admissions during the first half of the nineteenth century almost perfectly: after the admission of Tennessee in 1796, there were eight slave states and eight free or soon-to-be-free states. Over the next fifty years, admissions were either paired or alternated: Ohio and Louisiana, Indiana and Mississippi, Illinois and Alabama, Maine and Missouri, Michigan and Arkansas, and then Texas and Florida coupled with Iowa and Wisconsin.

However, as we have seen, the balance rule does not explain the case of Oregon. Indeed, throughout the 1850s, it falls apart. In the four major episodes of state admission in the 1850s—the Compromise of 1850, the ultimate failure of Kansas statehood, the admission of Minnesota, and the admission of Oregon—the balance rule does not have much explanatory power. Some scholars have argued that this is because of the exceptional circumstances of the 1850s—that the breakdown of the balance rule was due to growing agitation over slavery in the North or growing paranoia on the part of the southerners. In short, something changed historically such that the political calculus of state admissions in the 1850s was different from that of the previous sixty years in regard to statehood politics.

The argument presented here suggests that the perceived breakdown of the balance framework for understanding the admissions of the 1850s is due to its incomplete conception of the relationship between the balance rule and the statehood process itself. In the discussion that follows, four aspects of statehood politics are examined within the concept of this relationship: the inherently controversial nature of statehood without reference to slavery; the multiple stages of state construction, of which admission was only one step; the multiple locations of political action, of which Congress was only one setting; and the continual political contestation during the nineteenth century over the structure of the statehood process itself. A deeper understanding of the statehood process places the balance

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<sup>8</sup>Barry R. Weingast, “Political Stability and Civil War: Institutions, Commitment, and American Democracy,” in *Analytic Narratives*, ed. Robert Bates (Princeton, N.J., 1996), p. 151.

rule in context, and in turn the politics of the 1850s becomes less of an analytical puzzle.

## Statehood as Inherently Controversial

During the nineteenth century, statehood was consequential—and controversial—without regard to slavery. The major episodes of conflict over slavery in the nineteenth century are well known: the Missouri Compromise, the Compromise of 1850, the Kansas-Nebraska Act, the Lecompton Constitution, and so on. And while these are all conflicts over slavery, they are also conflicts over statehood. The traditional balance rule thesis assigns the controversy to slavery, making statehood a catalyst that exacerbated the tension. In the traditional view, slavery is the bonfire, statehood perhaps some extra gasoline thrown on it.

But there are good reasons to believe the opposite is true, that the root conflict in these episodes is not slavery but national expansion, and that the catalyst is whatever interest—such as slavery—happens to be dividing national politics. In this view, statehood itself is a bonfire. This is a satisfying revision in at least one sense: we know that statehood politics was extraordinarily controversial both before the existence of slavery as a major cleavage in American politics and after slavery's demise. It just so happened that slavery was the dominant issue during a significant portion of western state construction.

Since the admission of new states inherently alters the composition of both Congress and the electorate for presidential elections, existing interests already represented in these institutions have an interest in the timing and order of admission. The Founders were keenly aware of, and extremely sensitive to, issues of apportionment at the Constitutional Convention, and the very idea of sharing central power with yet-to-be-constructed western states struck fear into many of the delegates.<sup>9</sup> Gouverneur Morris of Pennsylvania openly questioned whether western states should have equal representation, arguing that “they will ruin the Atlantic interest” if they gained power.<sup>10</sup>

<sup>9</sup>Charles A. Kromkowski, *Recreating the American Republic: Rules of Apportionment, Constitutional Change, and American Political Development, 1700–1870* (Cheltenham, U.K., 2002).

<sup>10</sup>Max Farrand, ed., *The Records of the Federal Convention of 1787*, 4 vols. (1911; rev. ed., New Haven, 1966), 1:571.

Elbridge Gerry of Massachusetts made similar comments, arguing that it might be “necessary to limit the number of new states admitted.”<sup>11</sup>

Similarly, the potential rebels at the Hartford Convention in 1814–15 held significant grievances about the recent admission of western states, without any regard to slavery. They were upset at the development of a western interest that had begun to take power away from the New England states. Indeed, throughout the nineteenth century, tension over western expansion existed on any number of dimensions that pitted not North versus South in a slavery struggle, but a variety of factions and a variety of interests. In contemporary times, it can be seen in the ideological and partisan struggles over representation for Washington, D.C.

But more important than the controversy, statehood was *consequential*. The admission of new states affected American politics in the nineteenth century in a way almost unimaginable today. Consider the period from 1812 to 1821. The United States went from a seventeen-state union to a twenty-four-state union in just nine years. Indeed, the entire nineteenth century experienced this phenomenon on a smaller scale, as on average three or four new states were added to the Union each decade. The effect of this reapportionment on the national government was profound. The mere passing of time altered the balance of power in Congress as much as any election.

So while typical accounts talk about the balance rule in the context of slavery, its basic features have nothing to do with slavery. It can be generally understood as an informal legislative solution to the institutional problem of reapportionment in the national government. If national power is to be redistributed, how can it be done in a way that is amenable to the existing, conflicting interests? One way is to cancel out opposing interests: thus, paired admissions. This raises a question: If we understand the balance rule as an artifact of the statehood process and not as an artifact of the sectional controversy, what role then do slavery and slave-related interests play in the balancing of state admissions?

I would suggest that slavery occupies no special position in statehood politics beyond that of an extremely important interest. Other interest cleavages (economics, taxation and tariffs, and government spending) are visible in state admissions politics. For instance, congressional representatives from western states had a recurring interest in internal improvements in the nineteenth

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<sup>11</sup>Ibid., 2:2.

century, and in many instances both free and slave western states supported the addition of other western states regardless of the slave status of the new state.

However, one aspect of slavery made it an ideal issue on which to balance state admissions: it was extremely stable as an interest. Free states did not become slave states; after the final abolition of northern slavery in the early nineteenth century, slave states did not become free. So when congressional factions enacted compromise legislation on the admission of new states, slave and antislave interests could be reasonably sure that the new states would remain in their respective coalitions indefinitely. State admission balanced along other policy cleavages—be it partisan affiliation or tariff policy—were much more likely to result in one side getting burned down the road, as the politics of the new state shifted.

### **Statehood as a Multistage Process**

Most accounts of statehood politics—and in particular the balance rule thesis—focus on state admissions. But often the consequential moments in the statehood process—and thus the proper place to look for political compromise—are not necessarily the final votes in Congress on admission. As Congress recognized early in the nineteenth century, they had the power to shape the political, economic, demographic, and cultural development of the territories and consequently the power to shape the future states. For instance, the homestead bill proposed by the Republican Party during the 1850s was a direct attempt to shape the West: by offering free plots of land limited to 160 acres, the bill would have undoubtedly encouraged small independent farmers to populate the territories, while discouraging slaveholders who needed larger plots of land to profitably operate a plantation.

The statehood process is largely characterized by *path dependence*. Decisions made early on in the process of forming new western states are likely to have large effects downstream and ultimately come to shape the states long before they achieve statehood. This was largely recognized by politicians in the nineteenth century, and gradually the battle over western slavery as a legal construction shifted from an admissions battle to a territorial-creation battle in Congress between 1820 and 1860. The ability to shape the West at points of development before the admission of new states led to the need for legislative compromise earlier in the statehood process.

The Kansas-Nebraska Act of 1854 is an example. Bills had been introduced in 1851 and 1852 in the House for the organization of Nebraska—defined as all the leftover territory of the Louisiana Purchase—but little had come of it. In December 1852, Representative Willard P. Hall (D-Mo.) introduced a bill for the organization of the Platte Territory, reported out of committee by Representative William A. Richardson (D-Ill.) as the Nebraska Territory.<sup>12</sup> It defined Nebraska as present-day Kansas and present-day Nebraska, extended to the Rocky Mountains. The bill passed the House over southern opposition, 98–43, but was defeated in the Senate, as no accommodation to slavery was contained in the provision, and the southerners joined with some breakaway northern Whigs to block what looked to be just another territory north of the Missouri Compromise line.<sup>13</sup>

In December 1853, Senator Augustus C. Dodge (D-Iowa) introduced a new Nebraska bill, this time defining the territory as the entire unorganized residue of the Louisiana Purchase north of 36°30' N.<sup>14</sup> Still going nowhere in the Senate, the bill was entangled once again in sectional animosity, this time open rhetorical warfare over the continuation of the Missouri Compromise. The bill was recommitted to Stephen A. Douglas's Committee on Territories, for adjustments that could hopefully provide satisfactory on the slavery question and finally organize Nebraska.<sup>15</sup>

The goal in committee, for Douglas, was originally to find language that could appease both sections on the question of slavery. His own view was that the tenets of the Compromise of 1850 should prevail—that Congress has no place in assigning slave status to territories, and that each territory, upon its admission to the Union, could decide the question for itself.<sup>16</sup> Whether or not the southerners would accept this trade-off—the explicit repeal of the Missouri Compromise and the glimmer of hope for future slave states in exchange for the hard reality that the Plains was likely to produce six or more free states and zero slave states—was unknown.

Luckily for Douglas, the answer did not matter, because local politics intervened. In the fall of 1853 prospective settlers from Iowa and Missouri had crossed the rivers and organized themselves, the Iowans in Bellevue and the

<sup>12</sup>“A Bill to Organize the Territory of Nebraska,” H.R. 353, 32d Cong., 2d sess., 1853.

<sup>13</sup>*House Journal*, 32d Cong., 2d sess., Feb. 10, 1853, pp. 272–73; *Senate Journal*, 32d Cong., 2d sess., Mar. 3, 1853, pp. 321–22.

<sup>14</sup>“A Bill to Organize the Territory of Nebraska,” S.22, 33rd Cong., 1st sess. 1853.

<sup>15</sup>Julius Morton and Albert Watkins, *History of Nebraska from the Earliest Explorations of the Trans-Mississippi Region*, rev. ed. (Lincoln, 1918), p. 122.

<sup>16</sup>*Ibid.* p. 125.

Missourians in Wyandotte.<sup>17</sup> There in assembly, they elected “delegates” to Congress from “Nebraska,” Hadley Johnson and Rev. Thomas Johnson. Hadley Johnson then spent the remainder of the fall of 1853 traveling Iowa and ascertaining the wishes of various constituents in the western portion of the state as to their desires for Nebraska. The key demand, as it turned out, was for a territory that was exclusively west of Iowa, as much as was possible. Similar sentiments were echoed in Missouri.<sup>18</sup> In January, Johnson traveled to Washington, seeking an audience with the Committee on Territories and Judge Douglas, in the hopes of convincing him that a partition of the Plains into two territories along the fortieth parallel would be the wisest course of action.

Hadley Johnson’s plan was met with gushing support in Washington from the Senate delegations of Iowa and Missouri. They quickly arranged for Johnson to address Douglas and the committee on territories with his proposal. It was at this moment that Douglas saw the writing on the wall. Though the South might balk at a symbolic repeal of the Missouri Compromise that actually yielded zero slave states, the prospect of creating a new territory that might actually have an even chance at becoming a slave state would be too much for them to resist. Douglas brought forth a substitute bill, which included both the formation of two territories—Nebraska and Kansas—and the explicit language of popular sovereignty.<sup>19</sup>

At this point, it was all over except for the shouting, which was considerable. The new bill tied together all the pieces necessary for the center to hold: it purposefully undid the Missouri Compromise while specifically endorsing the logic of the Compromise of 1850; it satisfied the local needs of both Iowa and Missouri, guaranteeing it enthusiastic backers from both sides of the Mason-Dixon line; and it united the eastern and western portions of the nation with organized land that would provide an ocean-bound nation, with an economic center in Chicago, completing the work Douglas set out to do a decade earlier.

The bill passed on May 24, 1854, and was signed by the president on May 30.<sup>20</sup> The hindsight of history produces a view of Kansas-Nebraska necessarily seen through the prism of the slave crisis, Bleeding Kansas, the

<sup>17</sup>Raymond E. Dale, *History of the State of Nebraska* (Chicago, 1882), p. 174.

<sup>18</sup>*Ibid.*, p. 177.

<sup>19</sup>Morton, *History of Nebraska*, p. 128.

<sup>20</sup>*Stat.* 277 (1854).

Lecompton Constitution, and the Civil War. At the time, however, Douglas and others almost certainly thought they were completing the work of 1850 and securing once again a temporary peace in the slave conflict. The radicals in the North had shouted before; there was little reason to believe this time would be any different.

While this story almost perfectly represents the logic of the balance rule, it contains none of the details of the balance rule: there are no state admissions, there are no Senate seats at stake. The compromise is purely political: there is virtually no organic political community calling for a territory in Kansas—its creation was almost completely the result of political compromise in response to the demands of pluralism: giving each faction what it needs to secure the passage of the legislation. Even more important, in most balance rule discussions, the whole point of the balance rule is to maintain the sectional parity in the U.S. Senate. But the Kansas-Nebraska Act shows that the prizes awarded as part of statehood compromises are often not Senate seats. In this case, the prizes were a balance of potential Senate seats in the form of new territories, as well as the reversal of a public policy, the Missouri Compromise.

And this was true throughout the nineteenth century: the Missouri Compromise itself, often held up as the textbook example of the balance rule, was actually a larger compromise: one side got a slave state, the other side got a free state and a ban on slavery in most of the remaining west. The same was true of the Compromise of 1850. The North got a free state. The South got two territories organized without reference to slavery and a stronger fugitive slave act.

## **Statehood as More Than a Congressional Process**

It is popular to think about the statehood process as a congressional process. This is not unreasonable. The Constitution gives Congress complete control over the production of new states. Furthermore, members of Congress have always taken a deep interest in the addition of new states to the Union. This is not surprising. It is, after all, their legislative chambers that are altered by the addition of new member states and their coalitional balances that are upset by such alterations. Any change made to the balance of power in Congress has the ability to affect all public policies, as well as the rules of the

chambers. Necessarily, each member of Congress will be concerned with the ramifications of new states, as they will have the potential to affect the issues that are most dear to each individual member of Congress.

Nevertheless, there are theoretical reasons to suspect that western political leaders, both in political communities that exist on unorganized land and in the existing territories, would have just as much, if not more, interest in the institutional change of the western land as the members of Congress. First, the creation of new states alters not just the composition of the central government, but also the actual arrangements of governance in the individual territory or new state. To create a territory or a state is to fundamentally rearrange the institutions of governance in the provincial region: powers that were formerly held by the central government are granted to the territory or state, and the locus of decision-making power over public policy moves accordingly. For western political leaders *not* to take an interest in the politics of state formation would indeed be a strange observation.

Second, information about the West was asymmetric in the nineteenth century. Those who lived in the unorganized lands and territories of the United States were in a better position to understand and judge the realities of life in the developing areas. Members of Congress may have had specific positions, and even objectives, regarding the construction of new states, but their knowledge of the West was severely limited from their vantage point in Washington, D.C. Thus, when it came time to make the crucial decisions about western state construction—particularly issues of boundaries—they were almost completely reliant on the westerners themselves to make sensible decisions on the details of the issues of territorial division and final state boundaries, details that had long-lasting impacts for the development of the western political institutions as a whole.

Third, from the very early days of the Union, it became custom—if not law—that states would not be admitted to the Union against their will. This gave the citizens of western lands—and their leaders—something of a veto over institutional changes to the developing states. Particularly as admission approached, the ability of the westerners to reject statehood gave them leverage in decisions over the final size and boundaries of their new states. This was particularly clear in the cases of Iowa and New Mexico, each of whose territorial citizens rejected statehood plans produced in Congress that would have either reduced (in Iowa) or enlarged (in New Mexico) the size of the state.

As it affects the balance rule thesis, all this is most clear in the admission of Minnesota and the nonadmission of Kansas, in 1857. Minnesota, obviously destined to become a free state, was winding its way toward admission in 1856 and 1857. After moving through constitutional convention, the votes in Congress on final admission (originally scheduled in bill S. 86) were delayed in the months of January and February, 1858. Southern senators were worried about Kansas's admission to the Union (scheduled in bill S. 161) as a slave state, and thus delayed the admission of Minnesota.<sup>21</sup>

In early March an attempt was made by Senator James S. Green (D-Mo.), chairman of the Committee on Territories, to explicitly link the two bills into one, but the amendment failed. After much heated debate, and attempts by Senator Douglas to defeat the measure, the Senate voted to admit Kansas, with the proslavery Lecompton Constitution, on March 23, 1858, by a vote of 33 to 25.<sup>22</sup> The admission, however, was held up in the House, where antislavery forces had control of the chamber, newly named Douglas Democrats joining with Republicans to block the bill.

Meanwhile, Minnesota statehood was moving forward. Having passed the Lecompton admission of Kansas, the Senate voted 49–7 to admit Minnesota on April 7.<sup>23</sup> In the House, a compromise was reached, acceptable enough to pass, on Kansas. The so-called English Bill, admitting Kansas to the Union upon reratification of the Lecompton Constitution, passed the House on April 30 on a party line vote, 112–103, the compromise being enough to draw the northern Democrats back into the fold and support Kansas.<sup>24</sup> Minnesota statehood passed the House on May 11, 157–39, with the main opposition coming from Republicans and American Party members.<sup>25</sup>

Taking stock of what transpired in the spring of 1858, there was either a major miscalculation, or a major reassessment of strategy, by the Democrats. They had effectively admitted another free state, bringing the current ratio of free to slave states to 17:15, on nothing more than the hopes that the people of Kansas could be bought off by the Lecompton Constitution. All signs indicated that this was not going to be the case. Robert S. Stevens, writing to territorial governor James W. Denver in Kansas, thought the English

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<sup>21</sup>Jonathan Kasperek, "The State of Minnesota," in *The Uniting States*, ed. Benjamin F. Shearer (Westport, Conn., 2004), p. 639.

<sup>22</sup>*Senate Journal*, 35th Cong., 1st sess., Mar. 23, 1858, p. 280.

<sup>23</sup>Kasperek, "State of Minnesota," p. 639.

<sup>24</sup>*House Journal*, 35th Cong., 1st sess., Apr. 30, 1858, pp. 719–20.

<sup>25</sup>*House Journal*, 35th Cong., 1st sess., May 11, 1858, pp. 777–78.

Bill was unimaginably naive on the part of the southerners. “To my mind it is a most foolish plan; as it in fact submits the Lecompton Const. back to the people of Kansas for their acceptance with Slavery; and can it be possible they will take it! My opinion is they will not.”<sup>26</sup>

And they did not. Kansas rejected the Lecompton Constitution—and, in effect, slavery—by a vote of 11,300 to 1,788 in the referendum held in August 1858. This did not put them in the Union as a slave state, instead it sent them back to the drawing board for another Constitutional Convention, one that would not see the completion of statehood until after the secession crisis began in 1861. But it did seal the door on the last plausible slave state.<sup>27</sup>

## Contestation over the Statehood Process Itself

The admission of new states to the Union is a process largely governed by a single sentence in the Constitution. Article IV, section 3, clause 1, states, “New States may be admitted by the Congress into this Union.”<sup>28</sup> As a structural matter, there are three important features of constitutional statehood. The first feature is irreversibility; unlike most things in the Constitution, the addition of states is not a process that can be undone. This, perhaps, makes statehood unique among Constitutional actions. The second feature of the statehood clause is a surprisingly low threshold for the admission of new states. As noted above, the statehood clause is irreversible when applied and results in a fundamental altering of the political system. Yet the creation of a state is subject only to the same approval mechanism as a federal law: a bare majority in both Houses and the signature of the president.

The third feature of the statehood clause is that it gives Congress extraordinarily wide discretion. It gives almost no guidelines as to how expansion should happen; it directs only that Congress shall be responsible for it. This made the constitutional statehood process the most radical of all plans pro-

<sup>26</sup>Robert S. Stevens to Honorable J. W. Denver, May 14, 1858, Robert Wadleigh Smith Stevens Papers, 1856–75, Kansas State Historical Society.

<sup>27</sup>Grupo de Investigadores Puertorriquenõs, *Breakthrough from Colonialism*, p. 481.

<sup>28</sup>There are a few restrictions on the power of Congress to create new states: they cannot be formed within the boundaries of existing states, nor can they be formed by the junction of two or more states or parts of states without the consent of the state legislatures involved. Additionally, one jurisdiction—a future seat of government for the central government—is given special constitutional status.

posed in the 1780s for national expansion. All other plans provided Congress with specific instructions for either the sizing of new states or the factors that would lead to admission, usually a population threshold.

As the political battles over individual instances of territorial development and state admissions intensified during the nineteenth century, a significant number of political actors—hardened by over fifty years of disputes—tried to reform the rules of the game itself. Virtually all attempts made to alter the statehood process shared the same goal: depoliticize the process by removing congressional discretion over the timing and nature of admissions. During the 1850s a number of major legislative efforts were made to revise the statehood process and depoliticize the timing of admissions. Some bills, such as the Douglas plan of the Thirty-Sixth Congress, were introduced that specified the specific size of future states. Others, such as the Haskin plan, set exact population requirements for admission, completely removing final votes on admission.

The most famous bill of the Thirty-Sixth Congress—the Crittenden compromise—was not just a plan for a constitutional compromise on slavery but also a complete restructuring of the constitutional statehood process. In December 1860 two joint resolutions were brought before the Senate. The first and more famous was put forth by Senator John J. Crittenden of Kentucky, and later became known (after a few modifications) as the Crittenden compromise. The second joint resolution was put forth by Senator Stephen Douglas of Illinois. These resolutions are historically famous because of their main intent—they both attempt to alter the Constitution in such a way as to defuse the secession crisis that was brewing throughout the South in the wake of Lincoln's election and that had come to fruition in South Carolina on December 20.

What is often overlooked about both these resolutions is that they go into extraordinary detail about another change they both would make—a change to the fundamental mechanism of adding states to the Union—Article IV, section 3 of the Constitution. As it is written, Article IV, section 3, reads,

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Crittenden's proposal would have added the following relevant text:

When any Territory, north or south of said line, within such boundaries as Congress may prescribe, shall contain the population requisite for a member of Congress, according to the federal ratio of representation of the people of the United States, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States.<sup>29</sup>

Douglas's proposal would have added the following relevant text:

When such new States shall contain the requisite population for a member of Congress, according to the then federal ratio of representation, it shall be admitted into the Union on an equal footing with the original States. . . . No more territory shall be acquired by the United States, except by treaty, or by the concurrent vote of two thirds of each house of Congress; and, when so acquired, the status thereof in respect to servitude, as it existed at the time of acquisition, shall remain unchanged until it shall contain the population aforesaid for the formation of new States, when it shall be subject to the terms, conditions, and privileges herein provided for the existing Territories. . . . The area of all new States shall be as nearly uniform in size as may be practicable, having due regard to convenient boundaries and natural capacities, and shall not be less than sixty nor more than eighty thousand square miles, except in case of islands, which may contain less than that amount.<sup>30</sup>

All these plans had one thing in common: they sought to define a specific process for the production of new states, and place it beyond the reach of day-to-day politics. Experience had taught many in Congress that statehood was too important, and too controversial, a topic to be safely left in the hands of the legislature, because political opportunism too easily replaced objective decision making.

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<sup>29</sup>Joint Resolution Proposing Certain Amendments to the Constitution, S.R. 50, 36th Cong., 2d sess. (1860).

<sup>30</sup>Joint Resolution Proposing Certain Amendments to the Constitution, S.R. 52, 36th Cong., 2d sess., (1860).

## Back to Oregon

The admission of Oregon to the Union in 1859 does not fit well with the traditional balance-rule logic of the antebellum era: no southern state was paired for admission with Oregon, the voting did not go along sectional lines, and the southern Democrats—not the Republican Party—provided the decisive votes for admission.

In reality, the admission of Oregon is somewhat less puzzling. Although it was to be a free state, Oregon was also strongly Democratic in party affiliation and thus was able to capture enough votes from southern Democrats that, combined with virtually every northern Democratic vote, it could be brought into the Union, not as a free state but as a Democratic state. In effect, northern Democrats got the best of both worlds—a new free state that was Democratic in character. More interesting, however, is the trade-off made by the southern Democrats—accepting a free state in exchange for partisan control of it—and the Republicans—attempting to block a free state simply because they would not have partisan control of it. What explains this behavior?

After the admission of Minnesota and the failure of Lecompton, new slave states were essentially dead. No state had been brought into the Union with slavery since Florida in 1846, and all attempts to bring a proslave Kansas into the Union had failed. Thus, when Oregon came up for a vote in 1859, the entire playing field of the admissions compromise game had been changed. The southern Democrats had lost in Congress. They would never again have anything close to a majority in the House of Representatives; they were also two states behind in the Senate, with no slave states on the horizon and at least one free state, Oregon, awaiting admission.

Thus, the decision to push for the admission of Oregon by the southern Democrats was not a decision related to the balance of power in the Senate at all; that had been lost, irrevocably, as far as slavery was concerned. Instead, after Lecompton and *Dred Scott*, the southern Democrats shifted their attention away from the legislature and toward the executive. The real prize being competed for in the spring of 1859 was not the balance of power in the Senate between free and slave states but victory in the 1860 election and, as a secondary matter, partisan control of the Senate.

As David Potter has shown, the heart of southern paranoia in the late 1850s was not the crumbling of legislative power in the federal Congress and

the legislating of the abolishment of slavery, although that was a concern. The more immediate fear was that Republican control of the federal bureaucracy—particularly the end of censored mail and the placement of Republican federal officials in the South—could lead to either the rise of an abolitionist element in the South or, worse, a massive slave revolt.<sup>31</sup>

And thus the push for Oregon from the southern Democrats, and the attempt by Republicans to block Oregon statehood, are best understood in the context of the 1860 election, and the three (or possibly four) electoral votes that Oregon would carry. The events of 1856–58—the relative success of the Fremont candidacy in the north, the failure of the Lecompton Constitution and the rise of the Douglas Democrats, the *Dred Scott* decision, and the Lincoln-Douglas campaign—had put everyone on notice that 1860 was going to be a showdown between the forces of slavery and antislavery. Three partisan electoral votes were important enough that the balance of slave power in the Senate was a secondary concern to the parties involved.

The result, while perhaps a bit surprising, does reflect the wider understanding of the balance rule as an example of legislative bargaining over the admissions of states in a pluralistic legislature. And taking this wider view in general—one in which slavery is not the only issue, the balance of power in the Senate not the only concern, the admissions vote not the only point of conflict, and Congress not the only actor—allows us to more clearly examine the congressional politics of statehood and slavery in the 1850s.

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<sup>31</sup>Potter, *Impending Crisis*, p. 452.