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Stay East, Young Man? Market Repercussions of the *Dred Scott* Decision

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STAY EAST, YOUNG MAN? MARKET REPERCUSSIONS OF THE *DRED SCOTT* DECISION

JENNY B. WAHL*

> [I]t is the opinion of the court that the act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void . . . .
>
> *Dred Scott v. Sandford*[1]

INTRODUCTION

With a single sentence, U.S. Supreme Court Chief Justice Roger Taney affirmed the value of one type of property—slaves—and undercut the value of another—western land. Uncertainty about land markets suffused the economy in family decisions about whether and where to migrate, in the transportation sector (particularly railroads), in financial markets, and in politics.

Scarce data make it difficult to pinpoint the exact economic impact of *Dred Scott* alone.[2] If the case occurred today, economists might conduct an event study using detailed time series to determine whether it significantly affected various markets.[3] Lacking such data, this paper instead assembles

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1. 60 U.S. (19 How.) 393, 452 (1857).

2. I focus primarily upon the near-term implications of *Dred Scott*. Others have argued that, by forcing black Americans to rely upon courts for protection, the decision has had long-term effects including welfare dependency. *See, e.g.*, William Darity, Jr. & Samuel L. Myers, Jr., *Changes in Black Family Structure: Implications for Welfare Dependency*, 73 AM. ECON. REV. (PAPERS & PROC.) 59, 59–61 (1983).

3. For a lucid discussion of event studies, see A. Craig MacKinlay, *Event Studies in Economics and Finance*, 35 J. ECON. LITERATURE 13 (1997). Economic historians have used event studies to examine the effects of the Interstate Commerce Act of 1887. *See, e.g.*, Robin A. Prager, *Using Stock Price Data to Measure the Effects of Regulation: The Interstate Commerce Act and the Railroad Industry*, 20 RAND J. ECON. 280 (1989). Until William Buck Dana established the *Commercial and Financial Chronicle* in 1865, however, frequent and regular price series were not widely available. *See* DOUGLAS STEEPLES, ADVOCATE FOR AMERICAN ENTERPRISE: WILLIAM BUCK DANA AND THE *COMMERCIAL AND FINANCIAL CHRONICLE*, 1865–1910, at 40–45 (2002) (recounting the history of this publication). Interestingly enough, Jonathan Pritchett, Charles Calomiris, and Larry Schweikart are just

information from numerous sources to make the following argument: *Dred Scott* depressed the value of land in U.S. territories and thus stemmed the tide of migration westward, lowered the worth of investments in western railroads, and contributed to the financial panic that took place in the fall of 1857. These events provided a foothold for the emerging Republican Party, which in turn set the path for politics and policy for the next several decades.

I. THE LEGALITY OF SLAVERY IN THE TERRITORIES OF THE UNITED STATES

The history of where slavery was legal in the United States and where it was not can be confusing. Chart 1 summarizes the important developments pertaining to the *Dred Scott* case, going back to the birth of the republic. The Northwest Ordinance of 1787 outlawed slavery in the area north and west of the Ohio River, which included the future states of Illinois and Wisconsin as well as part of Minnesota.[4] Much of the Louisiana Purchase of 1803—which included Missouri and more of Minnesota—lay northwest of the Ohio River and was free soil under the Northwest Ordinance. In 1819, Missouri wanted to enter the Union as a slave state, arguing that the Northwest Ordinance did not apply to land west of the Mississippi River.[5] This led to the Missouri Compromise, which contained the Thomas Amendment that stated all territories of the Louisiana Purchase north of latitude 36°30′ were free, except for Missouri.[6] Missouri thus became a slave state in 1820; Maine (formerly part of Massachusetts) entered as a free state the same year.[7]

beginning an event study using New Orleans slave sale prices to ascertain the effect of *Dred Scott* on that market. E-mail from Jonathan Pritchett, Associate Professor of Economics, Tulane University, to author (Feb. 14, 2006) (on file with Chicago-Kent Law Review).

4. *See* PAUL FINKELMAN, SLAVERY AND THE FOUNDERS 34–79 (1996) (discussing the history of slavery prohibition in the Northwest Ordinance).

5. *See* PAUL FINKELMAN, *DRED SCOTT V. SANDFORD*: A BRIEF HISTORY WITH DOCUMENTS 8 (1997).

6. Act of Mar. 6, 1820, ch. 22, § 8, 3 Stat. 545, 548 (commonly known as the Missouri Compromise); J. Res. of Mar. 2, 1821, 3 Stat. 645 (resolution admitting Missouri into the Union).

7. *See* Act of Mar. 3, 1820, ch. 19, 3 Stat. 544 (admitting Maine into the Union); FINKELMAN, *supra* note 5, at 8.

CHART 1
Slavery in the Territories: A Brief Timeline

Date	*Event and Consequences*
1787	The Northwest Ordinance outlawed slavery in the area north and west of Ohio River, including the future states of Illinois and Wisconsin, as well as part of Minnesota.
1803	The U.S. entered into the Louisiana Purchase. Most of the Purchase lay north and west of Ohio River, including the future states of Missouri, Kansas, Nebraska, North and South Dakota, and much of the remainder of Minnesota.
1820	The Thomas Amendment of the Missouri Compromise stated that all territories of the Louisiana Purchase north of latitude 36°30′—except Missouri—were free.
1833–36	Dred Scott lived in Illinois.
1836–40	Dred Scott lived in Minnesota (part of Wisconsin Territory).
1847	The Mexican Cession was added to the U.S. after the war with Mexico. It included California, Nevada, Utah, parts of Colorado and New Mexico, and most of Arizona.
1850	The Compromise of 1850 admitted California as a free state and organized the rest of the Mexican Cession as non-interventionist (that is, permitted slavery in the region).
1854	The Kansas-Nebraska Act allowed settlers to decide whether slavery could exist in the territory of the same name (which stretched north to Canada and included the Dakotas), although the decision process was not well-specified.
Mid-1856	The sack of Lawrence, Kansas occurred, as well as other bloody events.
Feb. 1857	Kansas pro-slavers initiated a statehood movement, creating more tension in the territory.
Mar. 1857	The *Dred Scott* decision erased the 36°30′ line and opened all territories to slavery.

To claim his right to freedom, Dred Scott referred to the Northwest Ordinance and the Missouri Compromise in conjunction with his residence in Illinois in 1833–36 and Minnesota (then part of the Wisconsin Territory) in 1836–40.[8] By alluding to the Missouri Compromise, however, Scott's case opened Pandora's box: how should the Thomas Amendment apply to territories acquired after 1820?

This box had been opened before. Although David Wilmot suggested that slavery should be prohibited in the Mexican Cession—the spoils of the war of 1846–47—his proposal failed.[9] The Compromise of 1850 admitted California as a free state and organized the remainder of the Cession—Nevada, Utah, parts of Colorado and New Mexico, and most of Arizona—as non-interventionist, meaning that slavery could exist there.[10]

Less than five years later, the box was opened again. On January 4, 1854, Stephen Douglas introduced a bill to organize Nebraska as one large territory from latitude 36°30′ all the way to Canada.[11] This eventually passed as the Kansas-Nebraska Act, which permitted settlers to determine whether slavery could exist in the named territory.[12] The Act therefore repealed part of the Thomas Amendment, although it did not make particularly clear the process by which the citizens of a territory would choose to allow or exclude slavery.[13]

The ambiguity of the Kansas-Nebraska Act led to bitter conflict both in the nation's capital and on its frontier. The Democrats lost control of the House of Representatives in the 1854–55 elections.[14] May 1856 brought the sack of Lawrence, Kansas; John Brown's murders along the Pottawatomie; and Charles Sumner's caning by Preston Brooks in the Senate chamber.[15] In February 1857, proslavery territorial legislators added to the tension by initiating a Kansas statehood movement.[16]

8. Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 432–35 (1857).

9. *See* DON E. FEHRENBACHER, THE DRED SCOTT CASE: ITS SIGNIFICANCE IN AMERICAN LAW AND POLITICS 128–31 (1978) [hereinafter FEHRENBACHER, AMERICAN LAW AND POLITICS]; *see also* DON E. FEHRENBACHER, SLAVERY, LAW, AND POLITICS: THE DRED SCOTT CASE IN HISTORICAL PERSPECTIVE 61–62 (1981) [hereinafter FEHRENBACHER, SLAVERY].

10. *See* FEHRENBACHER, AMERICAN LAW AND POLITICS, *supra* note 9, at 157–77.

11. *See id.* at 181.

12. Kansas-Nebraska Act, ch. 59, 10 Stat. 277 (1854). For the Senate vote on the Act, see CONG. GLOBE, 33d Cong., 1st Sess. 531–32 (1854). For the Senate debate on the Act, see CONG. GLOBE, 33d Cong., 1st Sess. app. at 279–342.

13. *See* Kansas-Nebraska Act, ch. 59, 10 Stat. 277.

14. *See* FEHRENBACHER, AMERICAN LAW AND POLITICS, *supra* note 9, at 188.

15. *See* S. REP. NO. 34-191 (1856); H.R. REP. NO. 34-182 (1856); DAVID DONALD, CHARLES SUMNER AND THE COMING OF THE CIVIL WAR 278–311 (1960); FEHRENBACHER, AMERICAN LAW AND POLITICS, *supra* note 9, at 193; DAVID M. POTTER, THE IMPENDING CRISIS 1848–1861, at 208–13 (Don E. Fehrenbacher ed., 1976).

16. The movement culminated in the election of proslavery delegates to a constitutional convention. FEHRENBACHER, AMERICAN LAW AND POLITICS, *supra* note 9, at 458. Free-soilers had refused to participate in what they considered a fraudulent process. *See id.* at 458–62. Pro-slavers began meeting in September in Lecompton but suspended operations until after the October congressional election. *See id.* at 461. Newly appointed territorial governor Robert Walker then installed a legally elected antislav-

Amidst the turmoil, the *Dred Scott* case reached the docket of the U.S. Supreme Court. Justice Taney's opinion officially erased the 36°30′ line.[17] Until Abraham Lincoln resided in the White House, nothing prevented slavery from legally entering any U.S. territory after March 6, 1857.[18] This fact had important consequences for westward migration and the value of investments in the territories.

II. REGIONAL PRODUCTION PROCESSES, TERRITORIAL STATUS, AND DECISIONS TO MIGRATE WESTWARD

A. Asset Values, Production Technology, and Local Development in the Mid-1850s: Theory and Regional Evidence

A key factor in a Northerner's decision to migrate into the territories in the mid-1800s was whether free soil would surround him. Ideology played a part, but so did economics. To understand why, consider the nature of regional production. Jeffersonian yeoman farmers epitomized the North: immobile land was their primary owned asset, and they demonstrated a preference for proprietorship—even of a small holding—over hiring themselves out.[19] Labor was thus the scarce factor in agricultural production. Once settled, free-soil farmers would put their money into land clearing, schools, towns, transportation, and other forms of local development.[20] This investment, in turn, would affect the value of the surrounding area.[21]

ery legislature, which drafted its own constitution. *See id.* The Kansas citizenry voted on the Lecompton constitution in December and on the antislavery constitution a few days later. *See id.* at 469. In a costly move, Stephen Douglas opposed the Lecompton accord, not because it supported slavery, but because it was not the wish of the majority. *See id.* at 465–68. In the end, Congress adopted William H. English's compromise, which proposed that Kansas be admitted under the Lecompton constitution, but only after Kansas voters approved standard federal land grants for the state. *See id.* at 479–82. If the Kansas voters rejected the federal land grants, which they later did, then Kansas could not be considered for admission until its population had reached the federal ratio for one representative in Congress. *See id.* Kansas was later admitted to the Union on January 29, 1861. *See* Act of Jan. 29, 1861, ch. 20, 12 Stat. 126.

17. Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 452 (1857).

18. *See id.* A brief perusal of contemporaneous newspapers shows they were full of editorials and letters expressing fear that the *Scott* decision opened the territories—indeed, the entire nation—to slavery. Even the prospect of Oregon becoming a slave state was a serious one. *See, e.g.*, *Oregon to be a Slave State*, FARMERS' CABINET (Amherst, N.H.), Apr. 2, 1857; Letter to the Editor, *Letter from Oregon*, INDEP. (Harrisonburg, La.), March 19, 1857, at 2; Letter to the Editor, *Slavery Extension in Oregon*, NAT'L ERA, March 26, 1857, at 51.

19. GAVIN WRIGHT, THE POLITICAL ECONOMY OF THE COTTON SOUTH 45 (1978).

20. *See* Gavin Wright, *Slavery and American Agricultural History*, 77 AGRIC. HIST. 527, 540 (2003).

21. Northerners moved around, of course. The point is that their main asset was immobile. Even if people moved, they had an interest in enhancing immobile asset values because any improvements would be capitalized in the asset sale price.

The South, in contrast, held much of its wealth in mobile assets—that is, slaves.[22] Although land was also an important part of the Southerner's portfolio, the very fact that property could be held in a form not affected by local development meant Southerners had a different outlook on internal improvements as well as a production process that emphasized relatively abundant labor inputs. That Cyrus McCormick, with his labor-saving reaper, changed the locus of his operations from Virginia to Illinois in the mid-1840s is not surprising.[23]

Production processes were another difference between the two regions. Southerners practiced "shifting cultivation" and thus held large tracts of unimproved land, whereas Northerners kept a high proportion of land in constant use.[24] In 1860, Southerners cultivated only one of every three owned acres, while Northerners improved more than half their acreage.[25]

Northern eyewitnesses, including William Seward, offered disparaging comments about the seeming backwardness of the South. Seward took three trips South between 1835 and 1857, commenting each time on the "exhausted soil, old and decaying towns, wretchedly-neglected roads, and, in every respect, an absence of enterprise and improvement . . . ."[26]

Table 1 offers some evidence of the dissimilarity between the North and the South. Not only did people invest their own and their state's dollars in internal improvements, they also asked the federal government for specific land grants to build and refurbish wagon routes, canals, rivers, harbors, and railroads. Between 1823 and 1857, the North received one and a half times as much acreage as the South from such grants, despite the South's relatively larger geographic size.[27]

22. For dollar estimates, see ROBERT WILLIAM FOGEL, WITHOUT CONSENT OR CONTRACT: THE RISE AND FALL OF AMERICAN SLAVERY 81–89 (1989), and ROGER L. RANSOM & RICHARD SUTCH, ONE KIND OF FREEDOM 52–53 (1977). Certainly yeoman farmers existed in the South as well, many of whom owned no slaves. *See, e.g.*, David F. Weiman, *Farmers and the Market in Antebellum America: A View from the Georgia Upcountry*, 47 J. ECON. HIST. 627, 627–37 (1987) (examining patterns of yeoman farming in two Georgia counties).

23. *See* WILLIAM T. HUTCHINSON, CYRUS HALL MCCORMICK: SEED-TIME, 1809–1856, at 208–09, 246 (1930).

24. *See* John Majewski & Viken Tchakerian, The Environmental Origins of Shifting Cultivation in the Nineteenth-Century U.S. South 2–3 (Mar. 2006) (unpublished working paper), *available at* http://www.history.ucsb.edu/faculty/majewskiItems/EO.pdf.

25. *Id.* at 2.

26. ERIC FONER, FREE SOIL, FREE LABOR, FREE MEN 41 (1970) (internal quotations omitted).

27. By comparison, the total square miles (including land and water) in the South exceeded that in the North—about 917,000 to about 628,000. Texas includes about 268,000 square miles. The disputed areas of Kansas, Nebraska, the Dakotas, and Colorado comprise about 411,000 square miles. For geographic area by state, see U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITES STATES: 2006, at 221, tbl.347 (2005).

TABLE 1[28]
Specific Federal Land Grants for Internal Improvements, 1823–1857

Years	*Region*	*Acreage*	*Purpose*
1823–27	Ohio	80,774.54	Wagon Road
1827	Indiana	170,580.24	Wagon Road
1827–48	Indiana	1,480,409.00	Canal
1827	Ohio	1,204,114.00	Canal
1846+	Wisconsin	683,722.00	River
1846+	Iowa	1,161,514.00	River
1850	Illinois	2,595,133.00	Railroad
1856	Iowa	4,507,531.00	Railroad
1856	Michigan	3,103,880.00	Railroad
1856	Wisconsin	560,605.00	Railroad
1857	Minnesota	7,364,269.00	Railroad

TOTAL NORTH: 22,912,531.78

Years	*Region*	*Acreage*	*Purpose*
1828	Alabama	400,016.00	River
1850–56	Mississippi	1,285,743.00	Railroad
1852–53	Missouri	2,438,015.00	Railroad
1852–53, 1856	Alabama	3,193,719.00	Railroad
1852–53	Arkansas	3,836,595.00	Railroad
1856	Florida	2,497,719.00	Railroad
1856	Louisiana	699,221.00	Railroad

TOTAL SOUTH: 14,351,028.00

Table 2 offers additional proof of the disparity in transportation networks between the regions. By 1850, the six Southern states of Virginia, North Carolina, Georgia, South Carolina, Alabama, and Mississippi had only 12% of the canal mileage of the six Northern states of New York, New Jersey, Pennsylvania, Ohio, Indiana, and Illinois. If we add one state to each region—Massachusetts and Louisiana—railroad mileage was

28. *See* W.J. Donald, *Land Grants for Internal Improvements in the United States*, 19 J. POL. ECON. 404, 404 tbls.1 & 2, 406 tbl.3, 408 tbl.5 (1911).

roughly equal in 1840, but Southern states had less than half the mileage of the Northern states by 1860. In 1860, rail mileage per 1,000 square miles was 62 for the Northern states but only 22 for their Southern sisters. What is more, the level of investment per mile in the South was far below the national average, and Southern lines featured inferior rolling stock and far greater distances between stations.[29]

TABLE 2[30]

Canal and Rail Mileage, North and South, 1830–60

Canals

	1830	*1840*	*1850*
Northern States			
(NY, NJ, PA, OH, IN, IL)	1,041	2,630	3,005
Southern States			
(VA, NC, GA, SC, AL, MS)	68	361	361

Railroads

	1840	*1850*	*1860*
Northern States			
(MA, NY, NJ, PA, OH, IN, IL)	1,576	4,617	15,012
Southern States			
(VA, NC, GA, SC, AL, MS, LA)	1,099	1,787	7,001

Perhaps the most pertinent piece of information known to Northerners at the time of the *Dred Scott* case was that land values in the South were lower and increased less rapidly than in the North.[31] The per-acre value of farmland in the South had exceeded that in the North at the time of the American Revolution.[32] By 1850, however, the value of farmland and buildings in the South was less than half that in the North, and the per-acre value was only one-third.[33] Even after the cotton boom of the 1850s, the

29. *See* GAVIN WRIGHT, OLD SOUTH, NEW SOUTH 21 tbl.2.1, 22 & tbl.2.2 (1986).

30. *See id.* at 21 tbl.2.1, 22 tbl.2.2 (citing EUGENE ALVAREZ, TRAVEL ON SOUTHERN ANTEBELLUM RAILROADS, 1828–1860, at 171–72 (1974)).

31. *See* Gavin Wright, *Capitalism and Slavery on the Islands: A Lesson from the Mainland*, 17 J. INTERDISC. HIST. 851, 858 (1987).

32. *See id.* at 859.

33. *See id.* at 858 tbl.2.

per-acre value in the South was only 43% of the Northern value.[34] Land values simply rose much faster in the North, and people knew it. As Gavin Wright puts it, "This emerging perception was very much part of the 1824 [statehood] debate in Illinois (virtually a referendum on slavery), and it was even more firmly ensconced by the 1850s."[35]

B. The Effect of Territorial Status on the Migration Decision of Northerners

Converting a territory from free-soil to slave reduced the probability of migration westward for Northerners, in part because of the anticipated effect on land values. The following paragraphs will make this point clear.

Suppose the government released western land from the public domain. Northern farmers and wage workers would have considered migrating westward if the benefits exceeded the costs. Costs certainly included the purchase price of the new land—payment of which would have depended upon government policy toward squatters and preemption rights—but also encompassed the cost of clearing, fencing, and protecting the new property, as well as transportation costs to go west, foregone alternative earnings, and any losses associated with the sale of existing property.[36] Balanced against these were the Northerners' expectations of future earnings and capital gains as well as any non-pecuniary feelings of satisfaction that might have come with ownership.

How would allowing slavery into a territory have affected benefits and costs to the prospective Northern emigrant? A threshold question is whether permitting slavery necessarily meant that slaves would come. Stephen Douglas thought that the Kansas-Nebraska Act was all symbol and no substance: in his view, slavery itself would not be viable in the epony-

34. *See id.*

35. E-mail from Gavin Wright, Professor of American Economic History, Stanford University, to author (Feb. 16, 2006) (on file with the Chicago-Kent Law Review). For more evidence on land prices and people's perceptions, see Peter H. Lindert, *Long-Run Trends in American Farmland Values*, 62 AGRIC. HIST. 45, 47–54 (1988), and Joshua Michael Zeitz, *The Missouri Compromise Reconsidered: Antislavery Rhetoric and the Emergence of the Free Labor Synthesis*, 20 J. EARLY REPUBLIC 447, 475–78 (2000).

36. Woodland cost between $10 and $12 per acre to clear, and prairie cost between $2 and $5, for example. JEREMY ATACK & PETER PASSELL, A NEW ECONOMIC VIEW OF AMERICAN HISTORY FROM COLONIAL TIMES TO 1940, at 276 (2d ed. 1994). Land near railroads cost substantially more than the standard $1.25 per acre. For example, the Illinois Central Railroad offered land for $8 to $12 per acre. *Id.* at 275. Anderson and Hill make the excellent point that the price at which public land was sold (which could be artificially low) could generate a race for property rights. Terry L. Anderson & Peter J. Hill, *The Race for Property Rights*, 33 J.L. & Econ. 177, 195 (1990). Individual benefits from merely acquiring land, therefore, did not necessarily translate into social benefits. This aspect of the individual's cost-benefit calculus does not alter the essence of my argument.

mous territory.[37] Yet the evidence overwhelmingly shows that slavery could thrive in the territories. Gavin Wright makes this abundantly clear,[38] and Abraham Lincoln himself displayed a map showing the climactic and soil similarities between the Kansas-Nebraska territory and various Southern regions.[39] Weiman's study of the market in public lands in Georgia suggests that wealthy slave owners made up a disproportionate share of bidders at auctions, as they had the wherewithal to buy land ahead of using it.[40] Opening a territory to slavery might not have brought slaves in as neighbors immediately, then, but the Georgia study suggests that frontier settlers could have reasonably expected them later.

Chart 2 shows that the slave population definitely moved westward during the two decades preceding the Civil War and that the largest rate of growth occurred along the border of the western territory. Slaves grew increasingly valuable as well: a steep upward spike in slave prices occurred just after *Dred Scott* came to closure.[41] Evans reports average sale and hire prices for the upper and lower South for five-year periods.[42] Sale prices in the upper South were $529 in 1841–45, $709 in 1846–50, $935 in 1851–55, and $1,294 in 1856–60.[43] Prices were about 30% higher in the lower South.[44]

37. *See* Letter of Stephen Douglas to the Editor of the Concord (New Hampshire) *State Capitol Reporter* (Feb. 16, 1854), *in* THE LETTERS OF STEPHEN A. DOUGLAS 284, 289–90 (Robert W. Johannsen ed., 1961). David Potter, among others, argues that Douglas never thought that slavery would flourish in much of the region. *See* POTTER, *supra* note 15, at 171–72. Rather, Potter and other scholars suggest that he wrote the bill advocating popular sovereignty as a sop to Southerners in exchange for a greater likelihood of a transcontinental railroad being built near lands that Douglas owned. *See id.* at 152, 170; WRIGHT, *supra* note 19, at 154–55.

38. *See* Wright, *supra* note 20.

39. DORIS KEARNS GOODWIN, TEAM OF RIVALS: THE POLITICAL GENIUS OF ABRAHAM LINCOLN 167 (2005).

40. David F. Weiman, *Peopling the Land by Lottery? The Market in Public Lands and the Regional Differentiation of Territory on the Georgia Frontier*, 51 J. ECON. HIST. 835, 836 (1991).

41. *See* Laurence J. Kotlikoff, *The Structure of Slave Prices in New Orleans, 1804 to 1862*, 17 ECON. INQUIRY 496, 498 fig.1 (1979) (offering a chart of slave prices in New Orleans from 1820 to 1862, which shows a continuous increase from 1845 to 1860).

42. Robert Evans, Jr., *The Economics of American Negro Slavery, 1830–1860*, *in* NAT'L BUREAU OF ECON. RESEARCH, ASPECTS OF LABOR ECONOMICS 184, 216 tbl.19 (1962).

43. *Id.*

44. *See id.*

CHART 2[45]
Percent of Slave Population by Region, 1840–1860

So free-soilers were right to think that allowing slavery into a territory might bring slaves in, whether they arrived with their masters or were sold to new ones.[46] This, in turn, had implications for how the region would develop, how public funds would be allotted, and how land values would appreciate. Because private and public investments would be divided among multiple assets under a slave regime rather than devoted primarily to immobile property, expected benefits for small, non-slaveholding enterprises would be less than in a free-soil environment. Moreover, Southerners were likely to bring with them familiar agricultural practices, which in-

45. The states are grouped in the following categories: the Old South (Florida, Georgia, North Carolina, South Carolina, and Virginia), the Cotton South (Alabama, Louisiana, and Mississippi), the Northern Border (Delaware, District of Columbia, Maryland, Kentucky, and Tennessee), and the Western Border (Arkansas, Missouri, Nevada, New Mexico, Texas, and Utah).

The data on which these charts are based were obtained from Geostat Center, Univ. Va. Library, Historical Census Browser, http://fisher.lib.virginia.edu/collections/stats/histcensus (last visited Dec. 31, 2006). The number of total slaves in each state can be obtained by clicking on the desired year, "Slave Population," and then "total slaves."

46. Jonathan Pritchett finds that about half the slaves migrated from the exporting to the importing areas of the South with their masters and half were sold. *See* Jonathan B. Pritchett, *Quantitative Estimates of the United States Interregional Slave Trade, 1820–1860*, 61 J. ECON. HIST. 467, 467–68 (2001).

cluded shifting cultivation. Added to this was a large dose of racism and a panic about slave insurrections that grew palpable in the months just before *Dred Scott* was decided.[47] Even if many of the fears of freeholders were not borne out—virtually no slaves ever made it to Nevada, New Mexico, or Utah, despite the legality of slavery there[48]—expectations were what mattered.[49]

C. *Westward Migration by Southerners*

If Northerners were less likely to migrate, why wouldn't eager Southerners simply replace them? Presumably, the shift in status from free-soil to slave altered the desirability of territories to Southerners as well as Northerners.[50]

Southerners certainly bought land in the territories and western states: Gates reports that Southerners purchased 800,000 acres in the upper Mississippi Valley after the Kansas-Nebraska Act took effect.[51] By 1857, a group of Virginians was among the largest landholders in Iowa, Missouri, Wisconsin, Minnesota, Kansas, and Nebraska.[52] Louisiana senator (and prominent Confederate-to-be) John Slidell bought 45,000 acres in Wisconsin and Iowa in the period of 1857–58.[53]

47. Berwanger notes the prevalence of racism among Northerners. EUGENE H. BERWANGER, THE FRONTIER AGAINST SLAVERY 1, 4 (1967). For a description of the growing fears of slave insurrection during 1856–57, see Charles B. Dew, *Black Ironworkers and the Slave Insurrection Panic of 1856*, 41 J.S. HIST. 321 (1975) and Harvey Wish, *The Slave Insurrection Panic of 1856*, 5 J.S. HIST. 206 (1939). Some of these fears were fueled by actual uprisings, others by unsubstantiated rumors. Regardless of the truth, what mattered for migration decisions were people's perceptions that slaves were increasingly likely to cause unrest. Jeffrey S. Adler goes so far as to claim that St. Louis declined in importance relative to Chicago because eastern capitalists became reluctant to invest in a slaveholding state. *See* JEFFREY S. ADLER, YANKEE MERCHANTS AND THE MAKING OF THE URBAN WEST: THE RISE AND FALL OF ANTEBELLUM ST. LOUIS 175–77 (1991).

48. *See* U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, at 24 tbl.A195-209 (Bicentennial ed. 1975).

49. After *Dred Scott*, people even feared that the Supreme Court might declare that states had no say in determining whether slavery could exist within their borders. Another case—Lemmon v. People, 20 N.Y. 562 (1860)—is sometimes referred to as the "second *Dred Scott*" case for this reason. *Lemmon* was working its way through the New York courts just before the Civil War and may have landed on the docket of the U.S. Supreme Court had the War not intervened. In *Lemmon*, slaves traveling circuitously from Virginia to the lower South were freed by a writ of habeas corpus while in New York. *See id.* at 599–602. The slaveowner claimed that his property rights should have been protected. *See id.* at 565–76.

50. John Majewski cogently points out that the Freeport Doctrine later created uncertainty for Southerners, likely changing their migration patterns in the post-*Scott* years as well. E-mail from John Majewski, Associate Professor of History, University of California, Santa Barbara, to author (Mar. 14, 2006) (on file with the Chicago-Kent Law Review).

51. Paul Wallace Gates, *Southern Investments in Northern Lands Before the Civil War*, 5 J.S. HIST. 155, 179 (1939).

52. *Id.* at 163.

53. *Id.* at 173.

Yet Wright notes that many Southerners were quite comfortable staying where they were throughout the 1850s.[54] Improved acreage was growing more rapidly than the population in every single cotton state, meaning that migration was not necessary to keep the cotton growing.[55] What is more, the sheer number of potential migrants was much smaller in the South. Table 3 shows the number and percentage of white persons in each region in 1840, 1850, and 1860. One final important note: if Southern patterns of land value and growth were transplanted west, even a full replacement of population would not have yielded the same effect on land values as migration by Northerners. As we shall see in a later section, *Dred Scott* appeared to affect land markets as well as migration patterns.

54. *See* WRIGHT, *supra* note 19, at 132–33; Wright, *supra* note 31.

55. *See* WRIGHT, *supra* note 19, at 133. Some controversy exists as to whether Southerners would have even wanted to expand slavery into the new territories. Because slave prices depended heavily on cotton prices and expansion could cause the price of cotton to fall, Southerners may well have liked to keep cotton and slaves contained in existing slave states in order to keep the price of slaves high. *See* Laurence J. Kotlikoff & Sebastian E. Pinera. *The Old South's Stake in the Inter-Regional Movement of Slaves, 1850–1860*, 37 J. ECON. HIST. 434 (1977); Peter Passell & Gavin Wright, *The Effects of Pre-Civil War Territorial Expansion on the Price of Slaves*, 80 J. POL. ECON. 1188 (1972). *But see* Mark Schmitz & Donald Schaefer, *Paradox Lost: Westward Expansion and Slave Prices Before the Civil War*, 41 J. ECON. HIST. 402 (1981) (using a simulation study to find that westward expansion was not likely to reduce the price of slaves). Something these analyses do not discuss, however, is the effect on expectations of *denying* slavery in the territories. Suppose this action were seen as a precursor to banning slavery in general. Slave prices could have fallen much more in this situation than if slavery were lawful in the territories. What we actually observed were ever-increasing sale and hire prices for slaves from 1840 onward. *See* Evans, *supra* note 42, at 216 tbl.19.

TABLE 3[56]
Distribution of White Population by Region, 1840–60

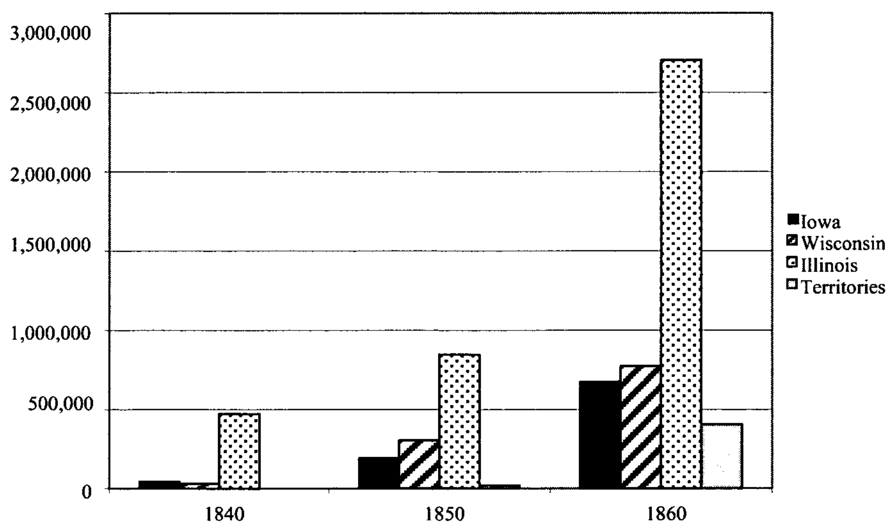
Region	*1840 White Pop. (N)*	*1840 White Pop.(%)*	*1850 White Pop. (N)*	*1850 White Pop. (%)*	*1860 White Pop. (N)*	*1860 White Pop. (%)*
NORTH Northeast (CN, ME, MA, NH, NJ, NY, PA, RI, VT)	6,618,767	47%	8,477,082	43%	10,438,028	37%
Midwest Free (IN, MI,OH)	2,392,380	17	3,325,275	17	4,377,660	16
Border Free (IA,WI, IL)	545,927	4	1,342,671	7	4,151,763	15
California	-	0	91,635	0	358,110	1
NORTH TOTAL	**9,557,074**	**67%**	**13,236,663**	**68%**	**19,325,561**	**69%**
TERRITORIES (CO, ND, SD, KS, MN, NE, OR, WA)	-	**0%**	**19,125**	**0%**	**404,586**	**1%**
SOUTH Southeast (DE,DC,MD)	407,422	3%	527,053	3%	667,270	2%
Atlantic (FL,GA,NC,SC, VA)	1,920,450	14	2,291,166	12	2,637,838	9
Cotton South (Al, LA, MS)	672,716	5	977,723	5	1,237,626	4
Midwest Slave (KY,TN)	1,230,880	9	1,520,249	8	1,746,501	6
Border Slave (AR,MO)	401,062	3	754,193	4	1,387,632	5
New Slave (NV,NM,TX,UT)			226,889	1	550,752	2
SOUTH TOTAL	**4,632,530**	**33%**	**6,297,273**	**32%**	**8,227,619**	**29%**
TOTAL	**14,189,604**		**19,553,061**		**27,957,766**	

56. *See* U.S. BUREAU OF THE CENSUS, *supra* note 48, at 24 tbl.A195-209.

D. Regional Changes in the White Immigrant and Native-Born Populations in the 1850s

Because *Dred Scott* was decided in 1857, we can glean only a small amount of information from the federal decennial censuses on how the case affected population growth and migration. Perhaps the most notable piece of information the censuses provide has to do with Illinois: this state hosted one-quarter of the total increase in the white population in the U.S. from 1850 to 1860. As Chart 3 vividly depicts, the growth rate of the white population in Illinois shot up in the 1850s relative to the 1840s, whereas that of its neighbors Iowa and Wisconsin slowed down. Numerically, the nearly 1.9 million increase in the Illinois population from 1850 to 1860 far outstripped the 1.3 million population increase in Iowa, Wisconsin, and all the disputed territories put together. These figures alone suggest that settlers may have been reluctant to push as far west in the decade before the Civil War as they were in the previous decade.[57]

CHART 3[58]
White Population in Selected Regions, 1840–60



57. California and Utah present unusual cases. California lured people west with the promise of gold, and Utah's population increase was comprised mainly of Mormons, who had their own reasons for moving to the territory. *See generally* JON KRAKAUER, UNDER THE BANNER OF HEAVEN (2003) (providing a recent account of Mormon history).

58. *See* Geostat Center, *supra* note 45. To obtain the total number of free whites in each state, click the desired year, then "Ethnicity/Race/Place of Birth," and then "total free whites."

Some population growth came from a natural increase of the in-state population, but for many areas migration from abroad and from other parts of the U.S. was also quite important in the decade of the 1850s. What Table 4 shows is something well-known: foreign immigrants—who comprised some 15% of all whites in the nation—tended to avoid slave states. Two-thirds of the foreign-born population resided in six states in 1860: New York, Illinois, Pennsylvania, Ohio, Wisconsin, and Massachusetts.

Of the total increase in the foreign-born population from 1850 to 1860, New York received nearly 20%, Illinois 11.5%, and Wisconsin 9%. Chicago was growing slightly faster than the rest of the state, but many of the new settlers came for the rich Illinois farmland. Minnesota was the one territory receiving greater than 1% of the increase in foreign-born residents. Of the slave states, only Missouri received more than 1.5% of the increase in foreign-born residents during the decade of the 1850s. Most slave states had a static population of foreign-born inhabitants.

TABLE 4[59]
Distribution and Growth of the Foreign-Born Population in the Fastest-Growing Areas, 1850 and 1860

State	*Number of Foreign Born 1850*	*% Total Foreign Born 1850*	*Number of Foreign Born 1860*	*% Total Foreign Born 1860*	*% Of Change in Number Foreign Born*
NY	655,929	29%	1,001,280	24%	18.6%
IL	111,892	5	324,643	8	11.5
WI	110,477	5	276,927	7	9.0
PA	303,417	13	430,505	10	6.9
CA	21,802	1	146,528	4	6.7
OH	218,193	10	328,249	8	5.9
MA	164,024	7	260,106	6	5.2
MI	54,703	2	149,093	4	5.1
IA	20,969	1	106,077	3	4.6
MO	76,592	3	160,541	4	4.5
IN	55,572	2	118,284	3	3.4
MN	1,977	0	58,728	1	3.1

59. *See* Campbell J. Gibson & Emily Lennon, *Historical Census Statistics on the Foreign-born Population of the United States: 1850–1990*, at tbl.13 (Population Div., U.S. Bureau of the Census, Working Paper No. 29, 1999), http://www.census.gov/population/www/documentation/twps0029/twps0029.html. The table includes only areas for which the total change was 3% or greater.

What happened to the native-born population during the 1850s? The best information we have comes from Joseph P. Ferrie, who tracks household-level data with the public-use micro sample of the censuses from 1850 and 1860.[60] Table 5 reports the net migration of this sample.[61] What we observe is that the greatest likelihood of movement of the native-born population between 1850 and 1860 occurred through (1) migration from the West Central states back to New England, the Mid-Atlantic, and the East North Central regions,[62] and (2) migration from the East South Central region to the West North Central region (which included Missouri), and from the South Atlantic and East South Central regions to the West South Central region. For example, if we were to track 10,000 native-born individuals living in the East South Central and West North Central regions in 1850, Ferrie's data suggest that we would expect to see 781 moving from the former to the latter and 280 moving the other way. On net, 501 would migrate from the East South Central region to the West North Central. In short, Northern natives were moving west to east, and Southern natives were moving east to west. Some Southerners who were already in central regions moved north.

60. Joseph P. Ferrie, *Internal Migration*, *in* HISTORICAL STATISTICS OF THE UNITED STATES: MILLENNIAL EDITION ONLINE (Susan B. Carter et al. eds, 2007), http://hsus.cambridge.org/HSUSWeb/toc/hsusHome.do.

61. Because the sample size was so small for the Mountain/Pacific region (27 people), I do not include it in this table. *See id.* at 1-493 tbl.Ac-E. Of these 27, about half remained in the area, about 11% moved to the South Central region, and the remainder moved northeast. *See id.*

62. Bill Melton's work on Manitowoc, Wisconsin, has unearthed several examples of men who moved into Wisconsin in the late 1830s to make their fortunes, then relocated back to New England. E-mail from Bill Melton to author (Feb. 20, 2006) (on file with the Chicago-Kent Law Review).

TABLE 5[63]
Net Migration of the Native-Born Population by Region, 1850–1860 (percent)

West North Central to New England	0.85%
West North Central to Mid Atlantic	3.79
West North Central to East North Central	1.39
TOTAL	6.02%
West South Central to New England	1.46%
West South Central to Mid Atlantic	3.71
West South Central to East North Central	5.17
TOTAL	10.34%
East South Central to West North Central	5.01%
East South Central to West South Central	1.45
South Atlantic to West South Central	0.94
TOTAL	7.40%

Censuses of the western states taken between the federal census years tell more about population movements: in Iowa, for example, the average annual rate of growth in population between 1850 and 1856 was 17%.[64] Between 1856 and 1858 the annual rate fell to 13%; the rate plummeted between 1858 and 1860 to a mere 3%.[65]

Fishlow offers supporting data on passenger rail traffic during the intercensal years.[66] Of the six major east–west arteries traversing Ohio, the number of through passengers dropped from 581,000 in 1857–58 to 367,000 in 1859–60, even as the number of tons of freight increased.[67] On net, the number of western-to-eastern through passengers on lines entering Chicago went from 108,000 in 1856 to 10,000 in 1860.[68]

63. *See* Ferrie, *supra* note 60, at 1-493 tbl.Ac-E. Ferrie's data in his Table Ac-E indicate movement in both directions; Table 5 in this paper simply calculates the net movement between any two regions. *See id.* Ferrie defines regions slightly differently. The regions in Table 5 are as follows: New England (CN, ME, MA, NH, RI, VT), Mid Atlantic (NJ, NY, PA), East North Central (IN, IL, MI, OH, WI), West North Central (MN, IA, MO, ND, SD, NE, KS), West South Central (AR, LA, OK, TX), East South Central (KY, TN, AL, MS), and South Atlantic (DE, MD, DC, VA, NC, SC, GA, FL).

64. *See* ALBERT FISHLOW, AMERICAN RAILROADS AND THE TRANSFORMATION OF THE ANTE-BELLUM ECONOMY 114 n.33 (1965).

65. *See id.*

66. *Id.* at 202–03.

67. *Id.*

68. *Id.* at 203.

The slowing of population growth during the latter half of the 1850s in the territories and the Northern states bordering western territories was partly due to a fall-off in immigration from overseas. The total in-migration from abroad was certainly a function of push factors like the Irish Potato Famine of 1845–50 as well as pull factors like expectations about slavery.

But what is most notable is the changing location of final settlement for all migrants, foreign- and native-born alike. The data suggest that the furious pace of westward movement slowed considerably about the time the *Dred Scott* decision was made public. In the North, both foreign- and native-born east-to-west migrants were more likely to terminate their trek in Illinois rather than points west. The relatively less numerous Southerners did move west but could not fill up the prairie nearly as fast as their Northern compatriots.

III. LAND MARKETS

Land markets offer another window into the world of the 1850s. At first glance, several features seem to complicate nineteenth-century land markets: the vast amount of public land available; transferable warrants awarded for military service that entitled the holder to a certain amount of acreage of unoccupied land; government policy concerning homesteading, preemption rights, and the timing of land auctions; construction and rumors of construction of rail lines; land grants to railroads; availability of credit; and the presence of land speculators.

Yet we can brush aside much of this apparent complexity to focus on something simple: high prices and large quantities sold signaled great demand, whereas low prices and small quantities sold meant relatively less demand. What we observe is a large decline in acreage sold and prices paid from 1856 to 1859, with a noticeable drop-off in the summer of 1857, followed by a short rally and then a plunge that coincided with the general panic that began in autumn. This pattern suggests that the decision in *Dred Scott* had an immediate impact on the demand for land and, coupled with other events, contributed to the long-term decline in land prices.[69]

To understand nineteenth-century land markets, one needs to know about military warrants. Between 1847 and 1855, Congress enacted four

69. Some scholars have speculated that the ending of the Crimean War—and the resulting decline in demand for U.S. wheat when European farmers went back to their fields—helped explain the fall in land prices. *See, e.g.*, JAMES L. HUSTON, THE PANIC OF 1857 AND THE COMING OF THE CIVIL WAR 262 (1987). Calomiris and Schweikart convincingly argue that any Crimean War effect would have shown up earlier than the dates I am investigating. *See* Charles W. Calomiris & Larry Schweikart, *The Panic of 1857: Origins, Transmission, and Containment*, 51 J. ECON. HIST. 807, 813–16 (1991).

bounty land warrant acts granting nearly 61 million acres of unsettled public-domain land to veterans of any war or their heirs.[70] Congress also legalized the transfer of warrants to anyone who wanted to buy them.[71] Among those participating in the active secondary market for land warrants were a host of eager speculators.[72]

People could buy public land at auction for cash as well.[73] What could stymie sales to the highest bidder were squatters, who often occupied some of the best land before surveyors even arrived.[74] To defuse a potentially explosive situation, the government offered preemption rights to squatters, adopting the policy formally in 1841.[75] Settlers could buy up to 160 acres of land at a minimum price of $1.25 per acre.[76] Minimum purchases in Ohio, Indiana, and Illinois were 80 acres; the revision of 1832 allowed settlers in Michigan and Wisconsin to purchase a minimum of 40 acres.[77] When problems arose with less desirable land left on the market for long periods, Congress passed the Graduation Act of 1854 to provide progressive price reduction to a minimum of 12.5¢ per acre for land unsold for more than 30 years.[78]

Public land sales for cash brought revenue to the federal government, of course, and government auction policy became a source of controversy about the time the Supreme Court decided *Dred Scott*.[79] Although residents of different regions were by no means united, Northerners generally preferred tariffs as a tool for raising revenue whereas Southerners spoke out for public land auctions.[80] During the 1840s, surveyors platted large tracts

70. Robert P. Swierenga, *The "Western Land Business:" The Story of Easley & Willingham, Speculators*, 41 BUS. HIST. REV. 1, 2 n.8 (1967). *See generally* ATACK & PASSELL, *supra* note 36, at 258 tbl.9.1 (providing a table of the significant public land laws from 1785 to 1916).

71. Act of Mar. 22, 1852, ch. 19, § 1, 10 Stat. 3, 3; *see also* Swierenga, *supra* note 70, at 2–3.

72. *See* Swierenga, *supra* note 70, at 3–7. Swierenga, *supra* note 70, offers plentiful information about Western land markets.

73. *See* ATACK & PASSELL, *supra* note 36, at 254.

74. *Id.* at 260.

75. *Id.*

76. *Id.*

77. *Id.* at 261.

78. *Id.* at 260.

79. *See* Paul W. Gates, *The Struggle for Land and the "Irrepressible Conflict,"* 66 POL. SCI. Q. 248, 248–49 (1951).

80. Gates and Reid discuss how Southerners viewed the tariff as reducing the profitability of cotton and internal improvements, therefore subsidizing Northern commerce. *See id.* at 248–50; Joseph D. Reid, Jr., *Understanding Political Events in the New Economic History*, 37 J. ECON. HIST. 302, 324–25 (1977). Hofstadter points out how low the tariff of 1857 was relative to earlier tariffs. *See* Richard Hofstadter, *The Tariff Issue and the Civil War*, 44 AM. HIST. REV. 50, 50 (1938). Huston argues that the bread riots of 1857 convinced some in the North that they needed a high tariff as well as free land in the West as a safety valve for disgruntled workers. *See* HUSTON, *supra* note 69, at 108. He also suggests that Southerners resented the increase in federal power inherent in a tariff. *See id.* at 109.

of land that were not auctioned until later, giving squatters time to put up structures and plant crops.[81] Advertisements for new public land went to zero in 1856 and a mere million acres in 1857.[82] But President Buchanan bowed to Southern pressure and ordered over 46 million new acres into the market (in addition to the already-advertised 80 million acres) over the period 1858–60, even as tariffs fell to an all-time low.[83]

Table 6 shows the importance of military warrants in land markets after 1855. Arbitrage would tend to equalize cash and warrant prices, however, so the cash price per acre approximates annual land prices. Note the decline in both price per acre and number of acres from 1856 through 1859. Throughout this time, supply generally was not a constraint; the trend in prices and quantities seems largely a function of declining demand. Consistent with this conclusion is evidence that the rate of return to land speculation in Iowa crashed after about 1854 and did not rise again until 1859.[84]

TABLE 6[85]
Number and Price of Acres Entered at the Public Land Offices, 1855–1861

Year	*Warrant Acres*	*Cash Acres*	*% Cash Acres*	*Total Cash Receipts*	*Cash Price Per Acre*
1855	1,345,580	15,729,524	92%	$11,485,384	$0.73
1856	8,382,480	9,227,878	52	8,821,414	0.96
1857	6,283,920	4,124,744	40	3,471,522	0.84
1858	5,802,150	3,804,908	40	2,116,768	0.56
1859	2,941,700	3,961,581	57	1,628,187	0.41
1860	2,782,780	3,461,203	55	1,843,630	0.53
1861	2,017,440	1,465,603	42	884,887	0.60

More detailed data on Iowa land warrant prices in the secondary market come from *Thompson's Bank Note and Commercial Reporters*.[86] Chart

81. Gates, *supra* note 79, at 251–52.

82. *Id.* at 252.

83. *Id.* at 253.

84. *See* Robert P. Swierenga, *Land Speculator "Profits" Reconsidered: Central Iowa as a Test Case*, 26 J. ECON. HIST. 1, 25 fig.4 (1966).

85. *See* Gates, *supra* note 79, at 254 tbl.1.

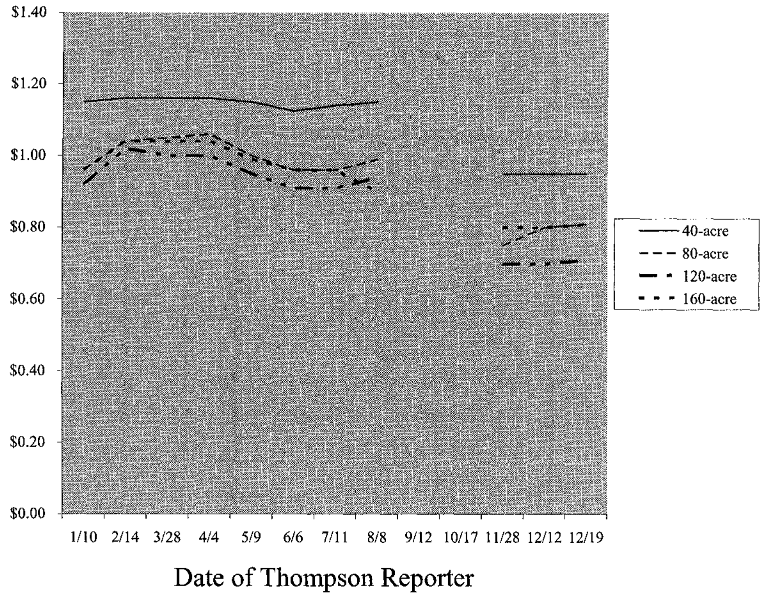
86. *Thompson's* does not report quantities, but the buy-sell prices were typically quite close, suggesting that these markets cleared. Volumes undoubtedly were lower between May 1856 and May 1857, when Iowa land offices closed to all but preemptors so that railroads could complete their selections. *See* Swierenga, *supra* note 70, at 8. But the lack of a spike in prices after May 4 (the day Presi-

4 records the sell price for various plot sizes on numerous dates in 1857. Of note is the drop after the *Dred Scott* opinion was finalized, and the continued fall after the transcript was printed and distributed widely on May 29. The evidence from land markets is consistent with that from immigration data—something significant made the West less attractive starting in mid-1857.[87] To explain the decline in land prices in later quarters of the year—and how it relates to the *Dred Scott* case—we must turn to an examination of financial markets. The next section takes up this topic, focusing particularly on the railroad market.

dent Buchanan opened the Osage, Fort Dodge, and Sioux City offices) suggests that no excess demand existed. *See id.*

87. People across the nation followed the case closely. *See* FEHRENBACHER, AMERICAN LAW AND POLITICS, *supra* note 9, at 422 (reporting that the *National Intelligencer* printed all of the opinions in full and that newspapers around the country printed at least excerpts). *Dred Scott* was not the only important news of the time, of course: June 1857 also marked the month when proslavery delegates were chosen to attend the Kansas constitutional convention, and autumn brought the widespread panic in money and credit markets.

CHART 4[88]
Iowa Land Prices, 1857



IV. RAILROADS, FINANCIAL MARKETS, AND THE EVENTS OF 1857

Railroads were intimately tied to land markets in the nineteenth century, partly because they received substantial land grants but mostly because they both affected and were affected by the expected value of the land surrounding them.[89] Owners of land could find themselves substan-

88. *See* J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., Jan. 10, 1857; J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., Feb. 14, 1857; J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., Mar. 28, 1857; J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., Apr. 4, 1857; J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., May 9, 1857; J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., June 6, 1857; J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., July 11, 1857; J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., Aug. 8, 1857; J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., Sept. 12, 1857; J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., Oct. 17, 1857; J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., Nov. 28, 1857; J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., Dec. 12, 1857; J. Thompson, THOMPSON'S BANK NOTE & COM. REPS., Dec. 19, 1857. Land markets were closed for the months of September and October during the financial panic.

89. Between 1850 and 1871, the federal government gave 131 million acres of public land to railroads, and Texas (which did not cede its land to the national government upon statehood) donated 27 million acres. ATACK AND PASSELL, *supra* note 36, at 436. In 1850 Congress passed a bill providing for alternate sections of land for six miles on either side of the railroad line connecting Chicago to Mobile to be conveyed to the states along the right of way. *Id.* Money from the sale was used to defray construction costs of the rail line. *Id.* In return, the rail line was to carry U.S. troops for free and to carry mail at rates fixed by Congress. *Id.* These general provisions continued in all subsequent land grants. *Id.*

tially richer—at least on paper—if a railroad were built nearby. They could transport both themselves and their products cheaper and faster by rail than by wagon.[90] This capitalization of reduced transportation costs into land values meant that savvy speculators did their best to ascertain where railroads were likely to be constructed so that they could buy up neighboring plots.[91]

By the same token, railroad managers were on the lookout for locations where people desired to live—greater population meant more traffic for trains and thus greater potential profits. The value of railroad stock reflects the accuracy of the company's predictions: if investors thought railroad companies made good decisions about where to locate tracks, for example, they were willing to pay more for railroad stocks.

Data about the earnings and stock prices of railroads therefore offer yet another way to evaluate the economic effects of *Dred Scott*. Chart 5 shows the net earnings of railroads in fiscal year 1855–56 and calendar year 1859 on Northern frontier lines, Northern interior lines, and Southern lines.[92] Chart 6 depicts the proportion of receipts generated by passengers in those two years. Note particularly the decline in net earnings on the Northern frontier, coupled with the drop-off in passenger importance on those lines. By contrast, Southern railroad earnings jumped significantly, and passenger traffic on the Southern frontier boomed in the later time period.[93]

Fishlow estimates that the land subsidy was worth about $400 million, or about 5% of the amount invested in railroads between 1850 and 1880. Albert Fishlow, *Internal Transportation*, *in* AMERICAN ECONOMIC GROWTH 468, 506 (Lance Davis et al. eds., 1972).

90. *See* ROBERT WILLIAM FOGEL, RAILROADS AND AMERICAN ECONOMIC GROWTH 82–83 (1964) (providing evidence of transportation cost differentials).

91. Jonathan Pritchett playfully points to the film *Blazing Saddles* as an example of this sort of behavior. E-mail from Jonathan Pritchett, Associate Professor of Economics, Tulane University, to author (Feb. 14, 2006) (on file with the Chicago-Kent Law Review).

92. The Northern frontier lines include railroads passing through the North Central region as well as large lines emanating from New York and Pennsylvania. *See* FISHLOW, *supra* note 64, at 174 map 2.

93. The Southern border railroads were located in Tennessee, Texas, and Missouri. *See id.*

CHART 5[94]
Railroad Earnings by Region, 1855/56 and 1859

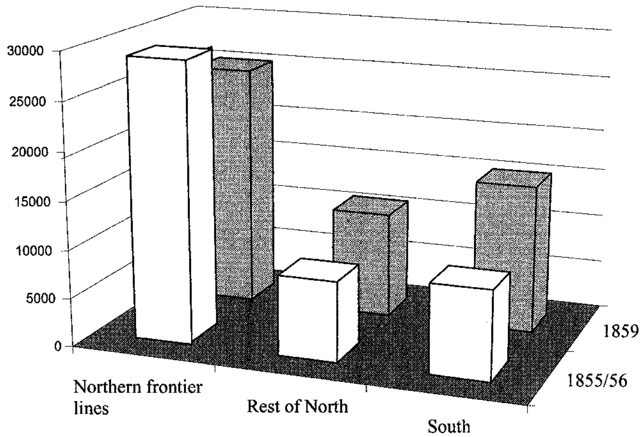
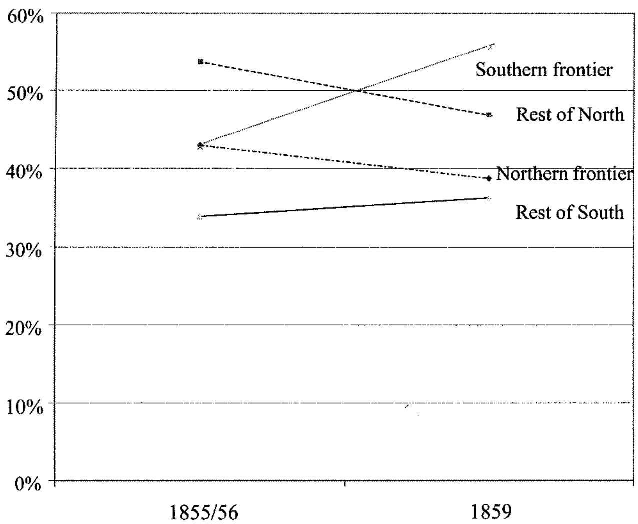


CHART 6[95]
Percentage of Passenger Receipts on Rail Lines by Region, 1855/56 and 1859



94. *See id.* at 328 tbl.43, 337 tbl.44.
95. *See id.*

Table 7, which focuses on the net earnings of western railroads as a percent of the cost of construction, presents much of the same picture. Overall, the percentage increased 1.6 points from 1849 to 1855/56, then nearly halved from 1855/56 to 1859. Table 8 indicates that receipts per mile for Chicago railroads increased from 1855 to 1856, then fell substantially until 1859, finally turning back up in 1860.

TABLE 7[96]
Net Earnings of Western Railroads as a Percent of Construction Cost

State	*1849*	*1855/56*	*1859*
Ohio	7.5%	6.4%	3.7%
Indiana	6.1	6.2	5.2
Michigan	4.2	10.2	4.6
Illinois	8.7	6.8	3.5
Wisconsin		12.5	3.1
Iowa			3.0
OVERALL	5.6%	7.2%	3.7%

TABLE 8[97]
Chicago Railroad Receipts Per Mile

Year	*Receipts Per Mile*
1855	5,300
1856	6,200
1857	5,500
1858	4,300
1859	4,000
1860	4,700

Yearly data are useful for describing overall trends; to decipher the effects of a particular event, however, shorter-term data can help fill in details. Recall that the year 1857 brought not only the *Dred Scott* decision but also chaos in Kansas and a financial panic that began in the fall.

To ascertain the economic effects of *Dred Scott* via railroad data, then, we need to know more about events that occurred concurrently. Some

96. *Id.* at 178 tbl.19.
97. *See id.* at 187 tbl.22.

scholars have attributed the woes of the railroads to the Panic of 1857, for example, which made credit harder to come by for both the railroads and their customers.[98] This view also points to credit constraints to help explain depressed land prices in the last part of the year: if people could not borrow funds to purchase land, we could expect land prices to fall as potential purchasers quit the market.

Calomiris and Schweikart reverse the causality in their important study, arguing that the declines in asset values preceding the Panic occurred only in a special class of western railroad investments.[99] Notably, these declines occurred right about the time of the *Dred Scott* decision, suggesting that expectations about the profitability of these investments were intimately tied to the question of slavery in the territories.

Cole charts the gross earnings of railroads by month for 1857, finding a drop-off for all companies in the early part of the year with the largest decline occurring in the western subgroup.[100] Cole and Frickey calculate a monthly index of mostly western railroad stock prices, which fell precipitously from eighty-six dollars in January 1857 to thirty-three in October.[101] By contrast, eastern railroad stocks were already low before 1857 and did not decline nearly as much.[102] Southern railroad investments and receipts increased throughout the decade of the 1850s.[103] These patterns suggest a speculative element in western stocks absent elsewhere.

Information from *Thompson's Bank Note and Commercial Reporters* supports this hypothesis. Table 9 contains stock prices for a number of railroads at various dates in 1857. Chart 7 plots the trends in two indices: one for lines that served the western region and the other for primarily eastern railroads. Although the two have similar patterns for much of the year, the western index is somewhat more volatile and, notably, falls off faster than the eastern index after the *Dred Scott* decision was published.

98. *See id.* at 114.

99. *See* Calomiris & Schweikart, *supra* note 69, at 813.

100. *See* Arthur H. Cole, *Statistical Background of the Crisis of 1857*, 12 REV. ECON. STAT. 170, 174 chart 1 (1930).

101. Arthur H. Cole & Edwin Frickey, *The Course of Stock Prices, 1825–66*, 10 REV. ECON. STAT. 117, 122, 125 chart 4 (1928). The railroads included are the Baltimore & Ohio, Chicago & Rock Island, Chicago-Burlington-Quincy, Cleveland & Toledo, Illinois Central, Michigan Central, Michigan Southern, New York & Erie, New York Central, and Philadelphia & Reading. *Id.* at 136.

102. *See id.* at 122.

103. *See* FISHLOW, *supra* note 64, at 187; *see also* Calomiris & Schweikart, *supra* note 69, at 813.

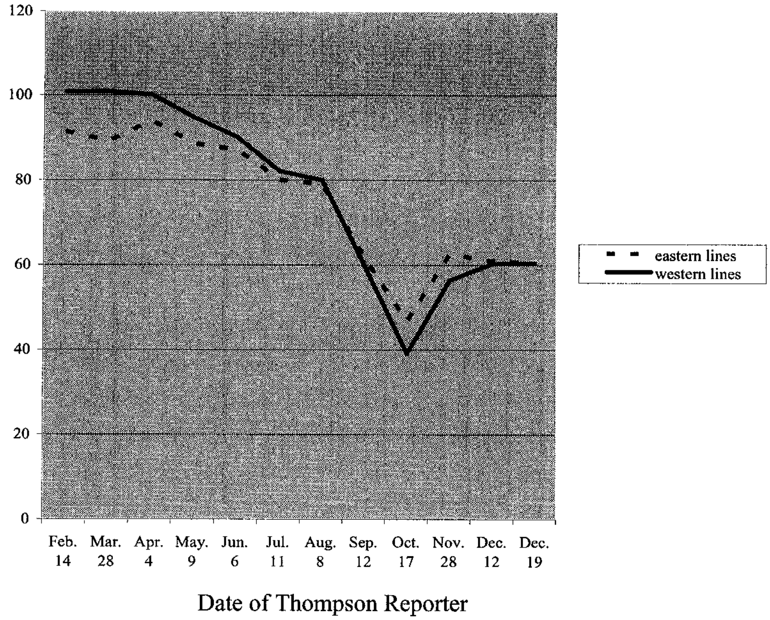
TABLE 9[104]

Stock Prices for Selected Railroads, 1857

Date	MI Ct.	MI S.	Chi RI	LaC Mlw	Gal Chi.	Clv Tol	CCC	Ill Ct	NY Ct	NY Erie	Clv Pit	Nhav Htfd	Hlm	Rdg	Hud
(par)	100	100	100	100	100	50	100	100	100	100	50	100	50	50	100
2/14	98	71	99	72	114	75	103	114	90	54	54	121	19	80	39
3/28	96	72	106	79	103	73	105	113	89	52	55	124	14	76	38
4/ 4	96	70	106	79	103	72	105	132	88	53	54	123	14	80	52
5/9	94	61	97	77	98	66	104	129	88	41	47	123	15	84	34
6/6	94	55	96	78	96	55	103	126	86	36	49	126	10	81	33
7/11	83	51	92	42	93	60	94	122	84	29	41	119	10	74	20
8/ 8	85	50	95	31	91	56	97	119	82	32	40	119	10	70	22
9/12	65	23	75	16	78	37	90	90	75	21	17	119	6	50	18
10/17	35	11	56	6	53	21	71	85	53	8	9	100	6	39	18
11/28	17	21	82	12	83	43	95	96	78	16	16	105	10	54	22
12/12	53	17	78	19	79	41	95	87	75	17	13	112	8	58	19
12/19	51	22	75	20	75	43	97	91	71	16	13	114	8	54	19

104. *See* sources cited *supra* note 88.

CHART 7
Trend in Railroad Stock Price Indices
(index par value = 100)



The fall in railroad stock prices—particularly for western roads—preceded the all-out commercial crisis that occurred in autumn.[105] The first victim of the crisis—the New York office of Ohio Life Insurance and Trust Company—closed its doors on August 24.[106] Significantly, the company held much of its assets in securities of and loans to western railroads.[107] One could reasonably conclude—as Calomiris and Schweikart did[108]—that the decline in the value of railroads triggered the financial panic, not the other way round.

But how could upheaval in rail stocks spark such a financial debacle? Here is a possible explanation: As the increased risk to the banking system became more apparent, depositors clamored to convert their holdings to specie. Convertibility became an issue as banks scrambled to satisfy their clients. Because no lender of last resort could come to the rescue, bankers

105. Cole also notes a drop in loans and deposits in March 1857. *See* Arthur H. Cole, *The New York Money Market of 1843 to 1862*, 12 REV. ECON. STAT. 30, 30–38 (1930).

106. Calomiris & Schweikart, *supra* note 69, at 817.

107. *Id.*

108. *Id.* at 809.

then refused to roll over loans to brokers, who had to sell at rock-bottom prices.[109] The result was a financial panic that reverberated throughout the nation and across the globe.[110]

CONCLUSION: PUTTING TOGETHER THE PIECES

So what was the economic effect of *Dred Scott*? In short, the decision put the brakes on westward migration as free-soilers feared the spread of slavery throughout the territories. The South could not provide the numbers of bodies to replace the would-be Northern migrants, partly because foreigners tended to enter the nation through Northern ports and partly because the majority of the native-born population resided above the Mason-Dixon Line.

The slowing of the flow of people westward had an impact on land markets, dragging prices downward. In turn, uncertainty about the future profitability of westward expansion affected the value of railroad investments. The downward spiral in stock prices for western railroads led to heightened risk in capital markets and ultimately financial panic. The South weathered the crisis with relatively greater ease, in part because a portion of its capital holdings—slaves—continued to increase in value at this time.[111]

Concurrent events certainly contributed to the tumultuous times of 1857. Among other things, the mayhem in Kansas, a return to normalcy in Europe as the Crimean War ended, and the fiscal and monetary policies of the new Buchanan administration added to the disruptions in various markets. Because much of the migration data we have are from 1850 and 1860, for instance, disentangling the effects of *Dred Scott* on settlers' expectations from those attributable to the Kansas-Nebraska Act is difficult.

But the limited intercensal population data available suggest that early 1857 brought more change than the years just after Stephen Douglas's

109. For an analysis of the Panic of 1837 that also refers to the lack of a lender of last resort, see Jenny Wahl, *He Broke the Bank, but Did Andrew Jackson Also Father the Fed?*, *in* CONGRESS AND THE EMERGENCE OF SECTIONALISM (Paul Finkelman & Donald R. Kennon eds., forthcoming 2007). For a bird's-eye view of the Panic of 1857, see Cormac Ó Gráda & Eugene N. White, *The Panics of 1854 and 1857: A View from the Emigrant Industrial Savings Bank*, 63 J. ECON. HIST. 213 (2003), and Morgan Kelly & Cormac Ó Gráda, *Market Contagion: Evidence from the Panics of 1854 and 1857*, 90 AM. ECON. REV. 1110 (2000).

110. Hughes suggests that the Panic of 1857 was the first worldwide crisis of modern capitalism. J.R.T. Hughes, *The Commercial Crisis of 1857*, 8 OXFORD ECON. PAPERS (NEW SERIES) 194, 194 (1956).

111. Rezneck notes that the South did not suffer as much as the North during the Panic; Southerners used this fact to argue that slavery was therefore a blessing. *See* Samuel Rezneck, *The Influence of Depression upon American Opinion, 1857–1859*, 2 J. ECON. HIST. 1, 4 (1942).

brainchild. This seems logical: although the Kansas-Nebraska Act called into question where slavery might eventually be established, the defeat of Democrats in the congressional elections of 1854–55 breathed new life into antislavery forces, manifested particularly in Kansas.[112] The *Dred Scott* decision, supported by new president James Buchanan, marked a reversal for free-soil settlers.[113] Land-market and financial (particularly railroad) data reinforce this conclusion.

In fact, the data around the time of the decision may actually underestimate the impact of the case, because people knew about it for months beforehand.[114] The timing of events thus suggests that the catalyst for change could have been the growing awareness that freedom rather than slavery would have to be protected by positive law. The *Dred Scott* decision, above all else, brought this realization home to Northern voters. As Supreme Court historian Charles Warren suggests, Roger Taney indeed helped elect Abraham Lincoln to the presidency.[115]

112. *See* FEHRENBACHER, SLAVERY, *supra* note 9, at 91–92. These elections marked the demise of the Whigs, the rise of the Know-Nothings, and the first stirrings of the Republican Party. *See id.* at 89–90. Democrats lost more than 70% of the seats they had held in free states, and only 7 of 44 Northern Democrats who voted for the Kansas-Nebraska Act were re-elected. *Id.* at 89. As of December 1855, the Democrats had lost control of the House of Representatives. *See id.* at 91–92.

113. Buchanan's inauguration took place two days before the decision became public. *See* FEHRENBACHER, AMERICAN LAW AND POLITICS, *supra* note 9, at 312–13. Buchanan almost surely knew the content of the opinion via communications with Justice Grier: his statement in his inaugural address that the issue of slavery in the territories was a judicial question is highly suggestive, to say the least. *See id.* at 313.

114. The actual structure of the opinion underwent significant change just before it was announced, however. Initially, the Court appeared to be moving toward using *Strader v. Graham* as a precedent, which would allow every state the authority to determine status within its jurisdiction. *See id.* at 307–08; William M. Wiecek, *Slavery and Abolition Before the United States Supreme Court, 1820–1860*, 65 J. AM. HIST. 34, 53 (1978). The result would simply have been to uphold the decision by the Missouri Supreme Court to keep Dred Scott a slave. *See* FEHRENBACHER, AMERICAN LAW AND POLITICS, *supra* note 9, at 307–08. Justice Nelson began drafting an opinion along these lines. *See id.* But Chief Justice Taney acceded to the wishes of Southerners to finish the job begun by the Kansas-Nebraska Act. *See* POTTER, *supra* note 15, at 275. By February 14, dissenters Curtis and McLean were rumored to be addressing the territorial issue. *See* FEHRENBACHER, AMERICAN LAW AND POLITICS, *supra* note 9, at 309. Between the 14th and the 19th, the various members of the court put together the historic document. *See id.*

115. 2 CHARLES WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 357 (rev. ed. 1932).