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Introduction

A Disastrous Decade

It was a remarkable period, unlike any other in American history. It was the long decade of the 1850s. It began in 1848 with the end of the Mexican War and the presidential election. It ended in 1860 with the election of Lincoln and the secession of South Carolina. It began in crisis and ended in catastrophe. The crisis was rooted in the dramatic success of American forces in the Mexican War (1846–48). The war added massive amounts of new land to the nation—all or most of the present-day states of Arizona, California, Nevada, New Mexico, and Utah—and parts of Colorado, Oklahoma, Texas, and Wyoming. This enlargement of the nation created a deeply divisive debate over the status of slavery in the new territory. Compounding this were extravagant claims of Texas for much of New Mexico, southern demands for a new fugitive slave law, and growing northern dissatisfaction over the presence of slavery in the national capital. The gold rush of 1849 exacerbated the crisis, as tens of thousands of settlers and prospectors poured into northern California, making it eligible for statehood almost overnight.

Five presidents held office from 1848 to 1860. James K. Polk, the lame-duck, expansionist, proslavery Tennessean, had little influence on the events at the end of his administration. He had aggressively started a war with Mexico that led to overwhelming American victories. But he was unable to control events leading to peace and was forced to accept a treaty when he really wanted to continue the war to secure even more land. Meanwhile, he failed to create a political solution for the status of the newly acquired territory. His

successor, Zachary Taylor, was a southerner with substantial northern support and a slave owner who opposed the spread of slavery into the new territories. As a soldier he had commanded northerners and southerners and had lived substantial portions of his life in both sections. As the hero of the Mexican War he was the only president in this period who might have solved the crisis. Tragically, he died just sixteen months after taking office. Each president following Taylor—Millard Fillmore, Franklin Pierce, and James Buchanan—was worse than his predecessor.[1] None was able to successfully deal with the complexities that faced the nation, and all three in the end shamelessly appeased the most aggressive proslavery southerners while utterly ignoring the interests and needs of the North. Congress meanwhile passed two major pieces of legislation—the Compromise of 1850 and the Kansas-Nebraska Act, in 1854—but both only made the crisis worse. In *Dred Scott v. Sandford* (1857)[2] the Supreme Court tried to solve all the nation's problems in a single stroke. But Chief Justice Roger B. Taney's bold move backfired and his decision is considered the most notorious in our history.

Just as the constitutionally created institutions of government—the executive branch, the Congress, and the courts—failed the nation, so too did the political parties. Both major political parties fractured under the stress. The Whigs won the presidency in 1848 but quickly squandered their victory. Henry Clay, who had desperately wanted to be president, petulantly did everything in his power to undermine President Taylor's administration because he was angry at not getting the Whig nomination in 1848.[3] Rather than working with the president of his own party to solve the crisis, Clay opposed Taylor in a vainglorious attempt to make himself the head of the party and the de facto leader of the nation. The result was his proposed "omnibus bill" for dealing with slavery in the territories and other issues, even though his own party's

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[1] Two, James Buchanan and Franklin Pierce, are consistently listed as among the five worst, with Buchanan ranked as the worst or the second worst, behind Andrew Johnson. Millard Fillmore's place in the worst ten is secure, but I would argue he deserves better, as the fourth or fifth worst president. See Paul Finkelman, *Millard Fillmore* (New York, 2011).

[2] 60 U.S. (19 How.) 393 (1857). The literature on *Dred Scott* is vast. See generally Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in Law and Politics* (New York, 1978); Paul Finkelman, Dred Scott v. Sandford: *A Brief History* (Boston, 1995); and David Thomas Konig, Paul Finkelman, and Christopher Alan Bracey, eds., *The* Dred Scott *Case: Historical and Contemporary Perspectives on Race and Law* (Athens, Ohio, 2010). For a discussion of Chief Justice Taney's goals, see Paul Finkelman, "Was *Dred Scott* Correctly Decided? An 'Expert Report' for the Defendant," *Lewis and Clark Law Review* 12 (2008): 1219–52.

[3] See generally Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (New York, 1999).

president, Taylor, objected to the bill and was prepared to veto it. Taylor's death, in early July 1850, left a vacuum of leadership as Taylor's utterly obscure vice president, Millard Fillmore, stepped into the White House. On his first day in office Fillmore fired every member of the cabinet, the only accidental president to behave in this way. This left him without advisers and administrators while Congress debated Clay's compromise measures. By the time Fillmore left office the Whigs were in shambles. Fillmore's utter incompetence was underscored by his failure to win the 1852 nomination because his own secretary of state, Daniel Webster, blocked his nomination. In 1852 the party suffered the worst defeat of the century, and by 1856 the Whigs had simply disappeared.

The Democrats failed to capitalize on the ineptitude of their opponents. They won a huge victory in 1852 but bungled their control of Congress and the White House. Illustrative of the failure of the Democrats was the election of Nathaniel Banks as Speaker of the House, in 1855. He had been elected in 1852 to the Thirty-Third Congress as a Democrat, as part of the massive Democratic landslide that put Franklin Pierce in the White House. But in the wake of the Kansas-Nebraska Act, Banks left the Democrats, and in 1854 he won reelection on the Know-Nothing ticket. He became Speaker of the Thirty-Fourth Congress on a plurality vote. By 1856 Banks was a Republican. That year the Democrats barely won the presidential election against the Republicans, a brand new party running a presidential candidate for the first time. After the Democrats won the presidency in 1856 they were able to elect James Orr of South Carolina as Speaker, but in 1858 the Republicans took control of the House, electing William Pennington of New Jersey, a former Whig, as Speaker for the Thirty-Sixth Congress.

Between 1852 and 1856 the Democrats so alienated northern voters that James Buchanan became the nation's first "sectional" president. All previous winners of the presidential election carried a majority, or a near majority, of both sections.[4] Buchanan carried fourteen of the fifteen slave states,[5] but won only five northern states, even though he was from Pennsylvania. Buchanan then managed to alienate northern Democrats so badly that the

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[4]John Quincy Adams ran second in the electoral and popular vote and gained the presidency when Congress chose him after the 1824 election, when no candidate had a majority of the Electoral College.

[5]Fillmore, running as the candidate of the anti-Catholic, anti-immigrant Know-Nothing Party, carried Maryland.

party split in two. The Democrats lost control of the House in 1858, and were unable to even agree on a single presidential candidate in 1860. That year the Democrats failed to carry a single northern state. For Democrats, Buchanan's legacy was a catastrophe. It would take nearly three-quarters of a century for the party to recover. From 1800 through 1860 the Democrats won every presidential election but three and almost always controlled Congress. But from 1860 until 1932 the party would win the presidency only four times and would rarely control both houses of Congress.

Throughout the 1850s lawlessness and violence also shaped political developments. In the North, average, otherwise law-abiding citizens confronted federal marshals while resisting the enforcement of the Fugitive Slave Law of 1850. In the South, the governor of Texas sent the state militia to invade the New Mexico Territory, threatening to go to war with the United States in an attempt to seize half of New Mexico. In Kansas proslavery and antislavery settlers fought a mini–civil war, with deaths on both sides. In Congress, Representative Preston Brooks of South Carolina brutally attacked Senator Charles Sumner of Massachusetts, sneaking up on him from behind while he was seated at his desk and beating him insensible with a cane. One of Brooks's southern colleagues stood by on the floor of the Senate with a drawn pistol to prevent anyone from stopping the attack. As a final coda to the decade, in 1859 John Brown and eighteen fellow abolitionists seized the federal armory at Harpers Ferry, Virginia, in an attempt to begin a war against slavery. His hanging, in December 1859, turned him into a martyr for liberty in the North, while his raid made him the embodiment of evil in the South.

Slavery and American Constitutional Politics

The cause of this turmoil was of course slavery. Since the Revolution slavery had bedeviled American politics. As early as 1776 slavery had threatened national unity and undermined national public policy. At the end of July 1776, less than a month after the Continental Congress agreed to the Declaration of Independence, the delegates debated whether to tax slaves as well as free people in order to support the new nation. Taxation was to be based on population, not property. Northerners insisted that slaves contributed to the economy just like free people and thus should be counted when assessing taxes. Samuel Chase of Maryland complained that slaves were "wealth,"

not people, and should no more be taxed than "Massachusetts fisheries." He argued that old and young slaves were "a burthen to their owners." James Wilson of Pennsylvania sharply responded that in the southern colonies slaves were taxed just as free people. This led Thomas Lynch of South Carolina to utter the first (but not the last) threat of secession from that state, declaring that if Congress "debated whether their slaves are their property" then there would be "an end to the Confederation." He blustered, "Our slaves being our property, why should they be taxed more than the land, sheep, cattle, horses, &c.?" Benjamin Franklin, unimpressed by Lynch's arrogance, replied that there was "some difference between" slaves and sheep because "sheep will never make a revolution."[6]

Congress got past this issue, and did not focus on slavery again until the Revolution was over. By then two states (Massachusetts and New Hampshire) had ended slavery in their new constitutions while three others (Pennsylvania, Connecticut, and Rhode Island) had passed laws to gradually end slavery. In the South there was never any serious movement to end slavery, and policymakers utterly ignored the occasional southerner who proposed even the mildest emancipation scheme, such as Virginia's St. George Tucker.[7] However, in 1782 Virginia did allow masters to manumit their slaves within the state if they wished, and many thousands, who took the revolutionary rhetoric seriously, did so.

In July 1787, while delegates in Philadelphia were drafting the U.S. Constitution, the old Congress passed its only significant legislation on slavery. In the Northwest Ordinance, Congress prohibited slavery in the federal territory north of the Ohio River. This 1787 ordinance was the first national regulation of slavery. It prohibited "slavery or involuntary servitude" in the area but provided no enforcement mechanism. Few slaves were actually emancipated by this law, and settlers in present-day Indiana and Illinois who came there before 1787 continued to hold people in bondage until decades

[6]Worthington C. Ford, ed., *Journals of the Continental Congress,* 34 vols. (Washington, D.C., 1904–37), 6:1079–80.

[7]St. George Tucker*, A Dissertation on Slavery: With a Proposal for the Gradual Abolition of It, in the State of Virginia* (Philadelphia, 1796). Tucker reprinted the *Dissertation* in an appendix in his edition of Blackstone's Commentaries. St. George Tucker, "On the State of Slavery in Virginia," in Tucker, *Blackstone's Commentaries: With Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia,* 5 vols. (Philadelphia, 1803), vol. 2, app., pp. 31–89. For a discussion of how Tucker was ignored, see Paul Finkelman, "The Dragon That St. George Could Not Slay: Tucker's Plan to End Slavery," *William and Mary Law Review* 47 (2006):1213.

after the passage of the ordinance. In 1820 the Indiana Supreme Court ruled that under the state constitution of 1816—*not* the Northwest Ordinance—all slaves in the state were free.[8] Slavery lingered in Illinois into the 1840s, nearly sixty years after the adoption of the ordinance. In 1845 the Illinois Supreme Court ruled that the children of slaves born after statehood were free, but the justices were uncertain about the status of slaves born before statehood.[9] The court implied that slaves born in Illinois before the adoption of the Northwest Ordinance did *not* gain their freedom by that act.[10]

While the Confederation Congress debated the Northwest Ordinance, the Constitutional Convention drafted a document that recognized and protected slavery in a variety of ways. Most famously, the delegates agreed to count slaves for representation, but only with a three-fifths ratio. Ironically, in 1776 southerners in Congress like Thomas Lynch had insisted that slaves were property and should not be counted as people for purposes of taxation. However, eleven years later, when debating the allocation of representatives in the new Congress, southerners at the convention suddenly insisted that slaves were people and should be counted just as free people were counted. The final result—the three-fifths clause—gave the South extra voting power in the House of Representatives and also extra votes in the electoral college. Without the votes in Congress created by counting slaves, a number of important pieces of legislation, such as the Missouri Compromise and the Fugitive Slave Law of 1850, might never have passed. Similarly, without the electoral votes created by counting slaves for representation, the slaveholding Thomas Jefferson would not have defeated the nonslaveholding John Adams in the crucial election of 1800.[11]

In addition to giving the South extra political power for its slaves, the Constitution provided a number of other guarantees to slavery. The Constitution empowered Congress to use the military to suppress "domestic insur-

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[8] *State v. Lasselle,* 1 Blackf. (Ind.) 60 (1820). It is not clear whether this led to the emancipation of the existing slaves in the state. Archivists at the Indiana State Archives have recently discovered documentation suggesting that blacks were held in bondage in Indiana into the 1830s or 1840s. This material is mostly in French and not yet published, but discussions with these archivists lead me to conclude that our understanding of the process of abolition in Indiana is far from complete.

[9] *Jarrot v. Jarrot,* 1 Gilman (Ill.) 1 (1845).

[10] For a discussion of the persistence of bondage in both states, see generally Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson,* 2d ed. (Armonk, N.Y., 2001), pp. 37–80.

[11] U.S. Constitution, art. I, sec. 2, cl. 3 and art. II, sec. 1, cl. 2. For a complete discussion of slavery and the Constitution, see Finkelman, *Slavery and the Founders,* pp. 3–36.

rections," which for southerners meant slave revolts. In another clause the Constitution required that the national government protect the states from "domestic violence," which also included slave revolts. The fugitive slave clause provided that masters could recover their slaves if they ran away to other states, although it did not spell out the mechanisms for doing this. There was no significant debate over the fugitive slave clause at the convention, and during the ratification process no northerners seem to have noticed it. Southern federalists, however, praised it in their ratification conventions. The return of fugitive slaves would become one of the most divisive political and sectional issues in the 1840s and 1850s.

While the Constitution gave Congress plenary power over all "Commerce with foreign Nations, and among the several States," the delegates in Philadelphia modified this power to protect slavery by prohibiting Congress from ending the African slave trade (or the domestic slave trade) before at least 1808 and prohibiting both Congress and the states from ever levying export taxes. Southerners insisted on this clause to prevent an indirect tax on slavery by taxing the products of slave labor such as tobacco, rice, and later sugar and cotton.[12] In addition to the clauses directly related to slavery, three other provisions of the Constitution—dealing with the federal territories, the national capital, and the commerce power—would affect the debate over slavery in the 1840s and 1850s.

The Constitution gave Congress the right to "dispose of and make all needful Rules and Regulations respecting the Territory" of the United States. The application of this provision was naturally affected by slavery as settlement moved west. This obvious conclusion is underscored by the fact that the Confederation Congress sitting in New York City was legislating about slavery in the Northwest just as the convention was debating the powers of Congress. Following the ratification of the Constitution, Congress spent significant amounts of time dealing with slavery in the territories. Every time a new state entered the Union the issue lurked in the background. Territorial acquisitions from France, Spain, and later Mexico raised the question as well. So too did the creation of new territorial governments. Once the Constitution was in place, Congress reenacted the Northwest Ordinance with its prohibition on slavery, and then enacted the Southwest Ordinance, which allowed slavery in the territories that became Tennessee, Alabama, and Mississippi.

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[12]U.S. Constitution, art. I, sec. 8, cl. 15 (insurrections); art. IV, sec. 4 (domestic violence); art. I, sec. 8, cl. 3 (commerce); art. I, sec. 9, cl. 1 and art. V (slave trade); art. I, sec. 9, cl. 5 and sec. 10, cl. 2 (export taxes).

The Louisiana Purchase, in 1803, set the stage for other decisions on slavery. When Missouri sought to enter the Union as a slave state, in 1819, congressmen from the North objected, arguing that Missouri was north and west of the southern terminus of the Ohio River, and thus, under the Northwest Ordinance, slavery should not be permitted there. Southerners saw this as a contrived antislavery argument that made little sense. Slavery was an ongoing institution in Missouri when the territory became part of the United States through the Louisiana Purchase. Since 1803 no one in Congress had ever claimed that the ordinance applied to Missouri or that slavery should be prohibited there. Southerners also noted that since the Ohio River ended at the Mississippi River, Missouri, which was on the western side of the Mississippi, could not possibly be considered north of the Ohio River. The northern majority in the House of Representatives was more powerful than either of these two arguments, and thus for a year the Missouri question paralyzed Congress. Finally, Henry Clay of Kentucky brokered a successful compromise which provided that Missouri would enter the Union as a slave state, but slavery would be prohibited in all the remaining territories north and west of Missouri. Under this agreement, known as both the Missouri Compromise and the Compromise of 1820, slavery was prohibited in most of the existing federal territories. The compromise promised that in the future more free states would enter the Union than slave states, and slavery itself would be restricted to existing slave states plus the future states of Arkansas and Oklahoma.

The future, however, did not play out this way. The Missouri Compromise turned out not to be the beginning of the restriction of the spread of slavery, but rather, it was the last time Congress would restrict the spread of slavery until the Civil War. The acquisition of Florida in 1821 and the annexation of Texas in 1845 added huge amounts of land where slavery was legal and would flourish. In 1850 Congress allowed slavery in most of the territory acquired in the Mexican War. Only in California was slavery banned, and that was not accomplished by Congress but was a result of the demands of the people of the Golden State when it entered the Union. In the Kansas-Nebraska Act of 1854 Congress repealed the ban on slavery in most of the remaining territory that had been part of the Louisiana Purchase. And in *Dred Scott v. Sandford* (1857) the Supreme Court held that Congress had no power to prohibit slavery in *any* federal territories. Thus, the expectations of 1820—that slavery would have little space to spread—were undermined by constant acquisitions of new land, congressional backtracking on the settle-

ment of the slavery issue in the Missouri Compromise, and eventually the Supreme Court. In the long decade of the 1850s the debate over slavery in the territories would fracture the political parties and the nation.

Congress also had the power to "exercise exclusive Legislation" over the national capital, what became the District of Columbia.[13] The national capital would eventually be carved out of land ceded by Maryland and Virginia —states where slavery remained legal until the Civil War. Slavery was present at the founding of the national capital, and indeed most of the early public buildings were constructed with the use of slave labor.[14] From the beginning most of the prominent residents of the district were slave owners; and slaves staffed hotels and restaurants, drove carriages, provided skilled labor, and served as domestic servants throughout the city. Southern politicians, government officials, and military officers brought slaves to the district as domestic servants, carriage drivers, cooks, and sometimes paramours. While southerners considered it their right to take slaves into the District of Columbia, northerners found the presence of slaves in the national capital deeply distasteful. They argued that in a nation of free people it was particularly troublesome to have slaves in the seat of government.

Tied to the question of slavery in the capital was the issue of commerce in slaves. More aggressive opponents of slavery wanted to use the commerce power of Congress to prohibit the interstate slave trade. Surely Congress had the power to do this under its power to regulate commerce "among the several states." Agitation for this could get little traction in Congress because southerners were adamant that they *must* have the right to sell slaves in any state where slavery was legal. A ban on the interstate slave trade would have been a direct assault on the entire system of slavery, and would certainly have led to disunion. Thus, Congress never seriously considered such a ban. A prohibition on the public sale of slaves in the District of Columbia and on transporting slaves through the district for sale elsewhere was more realistic. The sight of slave coffles marching past the national Capitol was overwhelmingly offensive to northerners. Even some southern members of Congress may have been uncomfortable with the visible reminder of the most problematic and troublesome aspect of slavery. Most slave owners disliked the trade and considered professional traders to be socially beneath them, even

[13]U.S. Constitution, art. IV, sec. 3, cl. 2 (territories) and art. I, sec. 8, cl. 17 (national capital).

[14]See Paul Finkelman, "Slavery in the Shadow of Liberty: The Problem of Slavery in Congress and the Nation's Capital," in Finkelman and Donald R. Kennon, eds., *In the Shadow of Freedom: The Politics of Slavery in the National Capital* (Athens, Ohio, 2010), pp. 3–15.

if they knew that at some point in their life most masters would have to sell slaves to raise cash, settle estates, dispose of troublesome slaves, or relieve themselves of slaves they no longer needed for their farms or plantations. Thomas Jefferson, for example, denied that he participated in the slave trade, even as he ordered his overseers to sell slaves to raise cash.[15] James Madison refused to sell slaves for most of his life and did so only when he had more than he could use, or even feed, on his small landholdings. After the Revolution, George Washington simply did not sell slaves. He was adamant that he would never either buy or sell slaves, "as you would do cattle at a market." Thus, the demand for an end to the slave trade in the district was the one antislavery measure Congress acquiesced to in the 1850s. The ban on the trade in the district was essentially symbolic; it did not harm slavery as an institution, or even masters in the district. They could always take their slaves across the river to Alexandria, Virginia, where commerce in slaves survived.[16]

While white Americans debated the status of slavery in the west or the continuation of the slave trade (or even slavery itself) in the District of Columbia, individual slaves increasingly sought their own liberty by running away. Fugitive slaves created a constant irritation for national politics. For southerners, a runaway slave was a rebel who threatened the security of southern society while diminishing the assets of a slave owner. In *Somerset v. Stewart* (1772) the highest court in England ruled that slaves who reached Great Britain were free because there were no statutes establishing slavery there, and according to Lord Chief Justice Mansfield "so high an act of dominion" as holding someone as a slave could only be established by positive law.[17] This precedent was applicable to the free states of the North, such as Massachusetts and New Hampshire, where slavery had been abolished by the time of the Constitutional Convention. In response to fears based on this precedent and growing opposition to slavery in New England and some of the Middle States, the convention gave masters the right to recover runaway slaves

[15]Finkelman, *Slavery and the Founders,* pp. 184–85.

[16]George Washington to Alexander Spotswood, Nov. 23, 1794, in Washington, *The Writings of George Washington from the Original Manuscript Sources, 1745–1799,* ed. John C. Fitzpatrick (Washington, D.C., 1931–44), p. 47; Fritz Hirshfeld, *George Washington and Slavery: A Documentary Portrayal* (Columbia, Mo., 1997), p. 16; Henry Wiencek, *An Imperfect God: George Washington, His Slaves, and the Creation of America* (New York, 2003), p. 188; A. Glenn Crothers, "The 1846 Retrocession of Alexandria: Protecting Slavery and the Slave Trade in the District of Columbia," in Finkelman and Kennon, *In the Shadow of Slavery*, pp. 141–68.

[17]*Somerset v. Stewart,* 98 Eng. Rep. 499 (G.B., 1772).

through the fugitive slave clause. This clause was vague in its wording and opaque as to how it would be implemented. In 1793 Congress passed a law that provided for enforcement by either state or federal officials, with only limited procedural protections to prevent the kidnapping or removal on mistaken identity of free blacks. In response most northern states passed statutes, known as personal liberty laws, to insure that free blacks were not taken south as slaves.[18] In *Prigg v. Pennsylvania* (1842) the U.S. Supreme Court held that these state laws were unconstitutional because Congress had the exclusive power to regulate the return of fugitive slaves. While upholding the federal law of 1793, Justice Joseph Story, speaking for the Court, held that the states *ought* to help enforce the law, but they did not have to do so. In response to this, many states took a hands-off approach to the return of runaway slaves, prohibiting their judges from hearing fugitive slave cases and closing their jails and other facilities to slave catchers. Because there were few federal judges and marshals, this situation made it virtually impossible for masters to recover their slaves in the North.[19]

In response to *Prigg*, southerners demanded a new fugitive slave law that would provide a significant federal involvement in the capture and return of fugitives. Many northerners acknowledged the southern grievance over this issue. However, even some northerners who were not actively antislavery were also repelled at the very idea of slave catchers roaming their states, grabbing blacks who lived and worked in their communities and were often spouses or parents of free black residents and citizens of the northern states. The issue of returning fugitive slaves was deeply emotional for people in both sections. At the Constitutional Convention and during the ratification struggle, there had been almost no debate over the fugitive slave clause, but by the 1840s southerners saw the clause as a key component of the constitutional compromises over slavery. Southern masters saw the return of fugitives as a matter of moral and constitutional obligation as well as property rights. In southern eyes, northerners who failed to help capture fugitive slaves were little more than thieves, who helped deprive masters of their property. For increasing

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[18] Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North* (Baltimore, 1974); John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York, 1999).

[19] *Prigg v. Pennsylvania*, 16 Pet. 539 (1842). On *Prigg*, see Paul Finkelman, "*Prigg v. Pennsylvania* and Northern State Courts: Anti-Slavery Use of a Pro-Slavery Decision," *Civil War History* 25 (1979):5–35; and Finkelman, "Story Telling on the Supreme Court: *Prigg v. Pennsylvania* and Justice Joseph Story's Judicial Nationalism," *Supreme Court Review*, 1994, pp. 247–94.

numbers of northerners the return of fugitive slaves was equally a moral issue. Fugitive slaves embodied the spirit of the American Revolution—they bravely took great risks to gain their liberty. Many had lived in the North for years or even decades. Some were landowners; others were parents of northern-born children; some were voters. Dragging such people to the South, especially without even a fair trial, struck many northerners as deeply immoral.

The Crisis of the 1850s

All these issues coalesced in the 1850s. During and immediately after the Mexican War, Congress persistently debated the status of slavery in the territory that formed the fruits of victory. In the House the northern majority passed the Wilmot Proviso, which prohibited slavery in all the new territory. The Senate, where the South had a two-state majority during all but the last months of the war, defeated the proviso. The admission of Iowa to the Union, in December 1846, and of Wisconsin, in May 1848, gave the North parity in the Senate, but there were always a few northern Democrats willing to vote with the South to defeat the proviso. This led to a stalemate, even as nearly one hundred thousand people poured into California during the gold rush. Nothing could be done about the territories because neither side could win and neither side would compromise on the spread of slavery into the region. That is where the issue stood when President Zachary Taylor died, in July 1850.

Northern demands to end slavery in Washington, D.C., annoyed southerners, although there was no chance such a law would pass the Senate, or even the House. Southern demands for a new fugitive slave law similarly angered northerners, who did not want to become slave catchers doing the bidding of southern masters. Southern hotheads talked about secession, although they had little following in the South and most northerners did not take them very seriously. After all, since Thomas Lynch's outburst in 1776 southerners had been threatening to leave the Union. Meanwhile, the governor of Texas was planning an invasion of the New Mexico Territory to seize more land for what was already the largest state in the Union.

In response to all these issues, Congress crafted the Compromise of 1850 in an attempt to defuse the interstate conflicts. The compromise destroyed the Missouri Compromise line by opening Nevada and Utah to slavery; created

a federal law enforcement presence in every county in the North to help catch fugitive slaves; gave Texas a substantial amount of land that had been part of New Mexico; bailed out Texas by paying off the debt it had accumulated while an independent republic; brought California into the Union as a free state; and banned the public slave trade in the District of Columbia.

The Compromise of 1850 solved nothing. In the North anger persisted over the opening of new territories to slavery, while in the South armed adventurers, known as filibusters, invaded Cuba, hoping to seize that island from Spain to create still more land for slavery. Senator Albert G. Brown of Mississippi explained the Caribbean land grab and a future of more land grabs. "I want Cuba, and I know that sooner or later we must have it." But that was hardly enough for the seemingly insatiable southerners. Brown went on, "I want Tamaulipas, Potosi, and one or two other Mexican States; and I want them all for the same reason—for the planting and spreading of slavery."[20]

The next land grab was more local. In 1854 Congress repealed the ban on slavery west of Missouri, opening up all or parts of the future states of Kansas, Nebraska, South Dakota, North Dakota, Wyoming, Colorado, Montana, and Idaho to slavery. In the space of four years the vision of a free United States had been replaced by a nation where slavery could spread across the nation, and where the free states could become a minority. In Kansas northerners resisted this onslaught of bondage by trying to outnumber southern settlers. Congress had provided that the issue of slavery in Kansas would be determined democratically, through "popular sovereignty." But when Free-Soil settlers began to outnumber southerners, the Pierce administration stepped in to support undemocratic elections that favored slavery. As violence turned the Kansas Territory into Bleeding Kansas, Pierce and his successor, James Buchanan, used the military to favor southerners. When the proslavery men sacked the free-state capital at Lawrence, President Pierce did nothing to seek out the culprits.

The failure of the national administration to prosecute proslavery violence in Kansas mirrored other national policies. The Pierce administration refused to seek an indictment against Congressman Preston Brooks after he attacked Senator Charles Sumner with a cane, beating him insensible. Similarly, when filibusters invaded Cuba in violation of federal law and a

[20]James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York, 1988), p. 106.

presidential proclamation, President Fillmore did not seek any prosecutions. In fact, he used federal money to bring the invaders back to the United States, after they were captured and sent to Spain for trial. Proslavery violence, in Kansas, on the Senate floor, or in Cuba, went unnoticed by American presidents.

Not so with antislavery activities. Fillmore, Pierce, and Buchanan all authorized vigorous prosecutions of northerners who helped rescue fugitive slaves from their masters or from federal custody. In 1851 fugitive slaves in Christiana, Pennsylvania, resisted an armed attack by a Maryland master, which ended with the slave owner being killed. The runaway slave who actually killed his master escaped to Canada, but President Fillmore personally authorized the largest treason prosecution in American history, as he tried to punish whites and blacks who had not actually participated in the event but rather had simply refused to help the slave owner capture his slave. While southerners in Kansas were never charged by the federal government for shooting and even killing northerners, the national government vigorously proclaimed the abolitionist John Brown a wanted man because he had defended Free-Soilers in Kansas and helped slaves escape from Kansas and Missouri.[21]

Conflicts over fugitive slaves in many ways defined the decade. In 1851 there were three spectacular riots that prevented the return of fugitive slaves from Boston; Christiana, Pennsylvania; and Syracuse, New York. The failed rescue of Thomas Sims in Boston also garnered headlines. The Fillmore administration aggressively, but ultimately incompetently, prosecuted numerous people for these rescues but obtained only one conviction, of a black man from Syracuse, who died while his case was on appeal. In 1854 the Pierce administration proved it could enforce the law in Boston, using federal troops, state militia, scores of special deputies, and a coast guard cutter, and spending perhaps as much as $100,000 to remove Anthony Burns to Virginia, where he was sold for about $900. The political cost of the removal was even greater than the financial cost, as the event exposed the impotence of the federal government to enforce the law and demonstrated to the whole North the utter unfairness of the 1850 law. Both the Pierce and Buchanan administrations relentlessly prosecuted Sherman Booth for leading the rescue of a

[21] Brown directed the killing of proslavery settlers at Pottawatomie, but the national government did not know of his involvement in that event and did not try to arrest him for it. See generally Robert E. McGlone, *John Brown's War against Slavery* (New York, 2009).

slave in Wisconsin, which led to one of the few convictions of a slave rescuer.[22] Similarly, in 1858 the Buchanan administration arrested scores of antislavery students and professors at Oberlin College, as well as residents of the town, but won only two convictions, and for the rest of the rescuers had to settle for plea bargains with token fines, many of which were never paid. While three administrations futilely tried to prove the efficacy of the fugitive slave law, northerners read countless stories of rescuers and autobiographies of fugitives, including a new version of Frederick Douglass's autobiography, *My Bondage and My Freedom* (1855). More important, northerners read and reread the greatest best seller of the century, Harriet Beecher Stowe's *Uncle Tom's Cabin* (1852), a novel that was mostly about fugitive slaves. Translated into numerous languages, the book was read everywhere in the world, except the American South, where it was banned. Queen Victoria sent Stowe a personal note, praising the book, but southerners reacted with horror at a novel that gave people around the world a sense of the humanity of slaves and brought into the homes of northerners the deep anguish caused by the sale of slaves and the desire of bondsmen and bondswomen to be free.

The last few years of the decade witnessed a flurry of events that drove the nation toward civil war. Chief Justice Taney's opinion in *Dred Scott* (1857) shocked northerners, who were suddenly told that blacks, even if born free in the North, could *never* be citizens and had *no rights* that whites had to respect.[23] Even more shocking was the chief justice's conclusion that Congress had no power to prohibit or even regulate slavery in the federal territories. This meant the Missouri Compromise (1820), the Compromise of 1850, and the Kansas-Nebraska Act (1854), as well as numerous other laws passed to create or regulate territories, were all unconstitutional. The decision was an invitation to the Republican Party to disband, because it had emerged in opposition to the Kansas-Nebraska Act and the spread of slavery in the territories. But of course the Republicans did not disband; by

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[22] Paul Finkelman, "The Treason Trial of Castner Hanway," in *American Political Trials,* ed. Michal Belknap (1981; rev. ed., Westport, Conn., 1994), pp. 77–96; Thomas Slaughter, *Bloody Dawn: The Christiana Riot and Racial Violence in the Antebellum North* (New York, 1991); Finkelman, "Legal Ethics and Fugitive Slaves: The Anthony Burns Case, Judge Loring, and Abolitionist Attorneys," *Cardozo Law Review* 17 (1996):1793–1858; H. Robert Baker, *The Rescue of Joshua Glover: A Fugitive Slave, The Constitution, and the Coming of the Civil War* (Athens, Ohio, 2006); Stanley Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law of 1850* (Chapel Hill, 1968).

[23] See Fehrenbacher, *The* Dred Scott *Case*; Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill, 1981); and Konig, Finkelman, and Bracey, *The* Dred Scott *Case.*

1858 they controlled the House of Representatives and in 1860 they won the White House.

The one great intervening event between *Dred Scott* and the 1860 election was John Brown's raid at Harpers Ferry in October 1859. Brown had been a committed opponent of slavery for most of his life, but was never closely connected to any antislavery organizations. He moved to Kansas in 1856 to help his sons, who had relocated there to make that territory a free state. Brown quickly became a leader of free-state forces. His Kansas adventures led him to conclude that some dramatic action was necessary to challenge slavery.[24] He focused on guerrilla activities, believing he could help slaves escape from the South by taking them north through the Appalachian Mountains. His first strike was at the U.S. arsenal in Harpers Ferry, Virginia (present-day West Virginia). There he planned to seize weapons and then fade into the mountains. In October 1859, with a small band of men—his adult sons and sons-in-law, veterans of Bleeding Kansas, naive abolitionist dreamers, free blacks, and some fugitive slaves—he quickly and easily seized the armory, but then either by design, through a failure of judgment, or because of an emotional collapse, he remained at the armory and the next day was captured. He was tried in early November and hanged on December 2, 1859.

Almost all northerners were appalled by Brown's violence. But, many were also charmed by his audacity and his willingness to bravely confront slavery and even die for freedom. He condemned slavery at his trial and during the last month of his life he wrote hundreds of letters from jail and gave numerous interviews. Brown self-consciously—and successfully—shaped himself as martyr. The transcendentalist philosopher Ralph Waldo Emerson called Brown "the new saint awaiting his martyrdom" and concluded he "will make the gallows glorious like the cross." The pacifist abolitionist William Lloyd Garrison predicted that hanging Brown would be a "terrible losing day for all Slavedom." Rev. Henry Ward Beecher, whose sister had written *Uncle Tom's Cabin,* declared that the "cord and the gibbet would redeem" Brown and turn the disastrous raid at Harpers Ferry into "a heroic success." Brown agreed, telling a colleague, "I am worth inconceivably more to hang than for any other purpose." Northern politicians generally condemned Brown and his violence, but in the end, his act altered northern politics.

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[24]The best study of Brown is McGlone, *John Brown's War against Slavery.* See also Evan Carton, *Patriotic Treason: John Brown and the Soul of America* (New York, 2006).

Many agreed with the Republican governor of Massachusetts, John A. Andrew, that while violence was wrong, and the raid itself was an absurdity, "John Brown himself is right."[25]

Southerners asserted a connection between Brown and the Republican Party, but of course none existed. Southern senators launched an investigation of the raid that became a partisan extravaganza aimed more at the 1860 election than at Brown or his activities. In 1860 Democrats referred to Lincoln as the candidate of the "John Brown Republicans," even though Lincoln and the Republican platform roundly condemned the raid. By the end of 1860 southerners had convinced themselves that Lincoln would make war on slavery, even though he lacked any constitutional power—and had no desire—to do so. Lincoln personally hated slavery—"If slavery is not wrong, then nothing is wrong," he wrote.[26] But he also understood that the Constitution protected slavery and he had no power to touch it.[27] However, extremist southerners, whether they believed Lincoln or not, used his election to lead their section out of the nation. In December 1860, South Carolina left the Union and in the first months of 1861 ten other southern states followed. The 1850s had ended in disaster and civil war.

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[25]Quotations in Paul Finkelman, "Manufacturing Martyrdom: The Antislavery Response to John Brown's Raid," in *His Soul Goes Marching On: Responses to John Brown and the Harpers Ferry Raid,* ed. Paul Finkelman (Charlottesville, Va., 1995), pp. 42, 43.

[26]Abraham Lincoln to Albert G. Hodges, Apr. 4, 1864, in Roy P. Basler, *The Collected Works of Abraham Lincoln,* 9 vols. (New Brunswick, N.J., 1953–55), 7:281.

[27]Paul Finkelman, "Lincoln, Emancipation, and the Limits of Constitutional Change," *Supreme Court Review,* 2009, p. 349.