PUBLIC OPINION IS MORE THAN LAW POPULAR SOVEREIGNTY AND VIGILANTISM IN THE NEBRASKA TERRITORY

Sean M. Kammer
Lewis and Clark Law School

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While debating Senator Stephen A. Douglas in the fall of 1858, Abraham Lincoln declared the principle of popular sovereignty, as applied to the Kansas Territory, to be "nothing but a living, creeping lie from the time of its introduction till today." While Lincoln conceded the right of majorities to rule and to shape policy, he maintained that there were moral limits to this right—a line beyond which democratic majorities could not govern. This view contrasted sharply with that of Douglas, who argued that the ultimate source of authority was the will of the people, and that this authority was unlimited. The morality of democracy, according to Douglas, lay not in any particular result but in the process of decision making itself.

Four years earlier Douglas had made his notion of popular sovereignty the centerpiece of an amended bill providing for the creation of the Kansas and Nebraska Territories. It declared that the new territories, when admitted as states, "shall be received into the Union with or without slavery, as their constitution may prescribe at the time of the admission." Predictably, debate over the bill exacerbated sectional tensions over the slavery issue. Because the act potentially allowed for the expansion of that institution into new territories, most Southern members of Congress embraced the bill's central principle of popular sovereignty. In contrast, most Northern members of Congress, including some Democrats, opposed extending the principle to the slavery question. Senator Salmon P. Chase of Ohio demonstrated the seriousness of the perceived stakes when he denounced Douglas's bill as
“an atrocious plot to exclude from a vast unoccupied region immigrants from the Old World, and free laborers from our own States, and convert it into a dreary region of despotism, inhabited by masters and slaves.”4 After months of intense debate, Congress finally passed the Kansas-Nebraska Act on May 30, 1854, largely along sectional lines.5

Over the next several years Kansas Territory became “Bleeding Kansas” as violence erupted between proslavery and free-state factions. While scholars continue to debate the true causes of the fighting in Kansas, there is a strong consensus that the conflict was fundamentally shaped by the national political debate over the extension of slavery—if not by the slavery issue itself. James C. Malin and James A. Rawley, for instance, while questioning slavery’s central role in causing the violence, recognized that Kansas’ symbolic importance in the national political debate played an important role in precipitating and shaping the conflict.6 More recently, Nicole Etcheson blamed the violence on the failure of politicians to find a solution that would both satisfy the Southerners’ claims for equal treatment and guarantee political rights to free-staters.7 She characterized Bleeding Kansas as a distortion of popular sovereignty through fraudulent elections and violence.8 However, while the violence in Kansas may have been unique in both its scope and the degree to which it influenced political developments in the rest of the country, it was not unique in its basic form. Indeed, by the mid-nineteenth century, the vigilante violence that typified Bleeding Kansas had become a common feature of the American experience. This phenomenon, most pronounced on the so-called frontier, dated back even prior to the American Revolution, when residents of the South Carolina and Virginia backcountries established their own systems of justice to make up for the lack of formal institutions.9

Bleeding Kansas occurred at a time when one type of vigilante group, the “claim club,” was becoming widespread across not only Kansas but also in places such as Iowa, Nebraska, Colorado, Montana, and California. Settlers in these frontier areas organized such groups to protect their claims to land, to ensure access to natural resources, and to assist members in securing legal title to land.10 Like other vigilante groups, claim clubs ruled through extralegal means and based their legitimacy on the doctrine of popular sovereignty. As scholar William E. Burrows argued in Vigilante!, popular sovereignty was a key intellectual foundation of “classic vigilantism” as well as “the most important political element contributing to the vigilante reaction.”11 Popular sovereignty was attractive to settlers not only because it gave them the authority to act in their own best interests but also because it was consistent with natural law’s edict that each person had the right and the responsibility to protect his own life and property in the absence of other protection.12

Historians have debated the extent to which these vigilante groups represented certain features of American nationalism. Historian Frederick Jackson Turner, in The Frontier in American History, famously argued that claim clubs were demonstrations of Western democracy and its promotion of economic equality and individual liberty.13 Similarly, in Vigilantism in America, Arnold Madison contended that the frontier tradition of vigilantism helped form many traits of modern America, including individuality, equality, and social, economic, and political mobility.14 Allan G. Bogue, however, challenged these assessments. Looking at the possible inequities of claim-club activity, he found a pattern of clubs being organized by speculators rather than by settlers, and in many instances being used “against the best interests of the very same settlers who have usually received credit for creating and operating them.”15

Despite considerable scholarly work on Bleeding Kansas, very little attention has been paid to the prevalence of vigilantism in the other territory created by the Kansas-Nebraska Act, a territory that in fact shared many similarities with territorial Kansas.16 As in Kansas, increasing numbers of settlers relocated across the Missouri River and into the Nebraska Territory immediately after passage of the act,
and Nebraska's future, like that of Kansas, was heavily influenced by the formation of vigilante groups during its territorial period. Nebraska settlers formed vigilance committees as early as the summer of 1854. Indeed, Nebraska's key difference from Kansas, namely that it did not become part of the national debate over slavery, makes a study of vigilantism in Nebraska intriguing, as any features common to both territories cannot be said to have been caused by the slavery issue alone.

Immediately after the Nebraska Territory's organization, many of the settlers in the vicinity of Omaha formed a claim club to secure what they considered to be their property, since the U.S. government, for the time being, could not afford them any protection. As of 1854, the only legal mechanism for Nebraska settlers to acquire public lands was pursuant to the Preemption Act of 1841, which allowed heads of families, widows, or single men to secure legal title to up to 160 acres of surveyed public lands, provided they followed the prescribed steps. After inhabiting and improving particular parcels, qualified settlers had thirty days to file a declaration of intent to preempt, and they had a year to prove the settlement and improvement, to submit an affidavit testifying that they met all of the requirements of the act, and to pay $1.25 per acre. However, because the government had yet to survey the land near Omaha or open a land office in the Omaha land district, settlers in Omaha were unable to file for preemptions. Thus, on July 22, 1854, a large group of these settlers met and approved a series of rules and regulations for the purpose of securing "mutual protection in holding claims upon the public lands in the territory of Nebraska." Their association—commonly called the "Omaha Claim Club"—was to enforce its rules until all the members secured legal title to their claims.

In this article I first examine how the settlers in Omaha and the surrounding area justified and rationalized the formation of claim clubs both by evoking the American political tradition of popular sovereignty and by repeatedly identifying (and exaggerating)
unclaimed. In this way, the club protected and promoted the speculative interests of its members and of Eastern investors who purchased large claims. That a vigilante group ruled Omaha through fraud, violence, and intimidation suggests that Bleeding Kansas would have been bloodied even in the absence of the slavery issue (although likely to a lesser extent), and that the violence and fraud that characterized Kansas politics during this period, far from being a distortion of popular sovereignty, represented the unrestrained democratic process typical of the West.

NEWCOMERS AND LAND SHARKS

During the tenure of the Omaha Claim Club, the male residents of Omaha—the majority of whom were members of the club—consistently expressed a disdain and fear of land speculators who, they worried, would purchase large acreages of unimproved land near Omaha, not to work or develop the land but to let the land sit idle until they could earn a substantial profit by selling it. Consistent with Burrows’s conclusions regarding vigilante groups, they often evoked the doctrine of popular sovereignty or its counterpart, “squatter sovereignty,” to defend both the formation of the claim club and its sometimes brutal exercises of power in protecting claims against the threat of speculators. Omaha squatters demonstrated their fervent anti-speculator spirit at the first meeting of the Omaha Claim Club, at which they adopted regulations requiring that a person maintain a residence in the Nebraska Territory or disclaim a residence elsewhere to become a member, and that members improve and erect a house on their claims to secure the club’s protection.20 These rules purported to protect only those settlers making beneficial use of their lands as opposed to resident or absentee speculators.

Claimants both welcomed and feared the opening of a land office in Omaha. While they desired the ability to secure legal title to their lands, they also expressed concerns that speculators would seize valuable lands ahead of any predicted opening of the land office. In February 1856, for instance, predictions that the federal government would soon open the Omaha land office prompted a large meeting of the Omaha Claim Club at the State House. After reiterating their purpose in forming the club—that being “for self protection, so that their lands should not be taken from them by speculators abroad or at home, thus robbing them not only of the fruits of their sacrifices and hardships, but also of their hard earned money, honestly paid for their claims”—the claimants recognized the apparent danger that valuable claims in the area would be “greedily sought for during the coming season, by newcomers and land sharks, who will employ and encourage idle men to take possession of them, and will also combine together to seize upon the land sales.”21 In the event of any claimant’s land being “jumped”—that is, seized—the Omaha Claim Club’s members pledged to proceed, when called by the “Captain of the Regulators,” to the claim, where the matter would be resolved immediately and “amicably”
by arbitration. Furthermore, if arbitration failed to settle the dispute, the members swore to "obey the Captain in carefully and quietly putting the jumper out of possession and the claimant in."22

Through that seemingly fateful season, the Nebraskan, Omaha's principal newspaper, conveyed the residents' contempt for land speculators and implored the Omaha Claim Club to protect farmers by ensuring that nonproducing speculators be prevented from monopolizing the most favorable public lands. Affirming that it had "little sympathy for non-resident land-sharks, and holders of duplicate claims whose object is only to speculate upon the necessities of the hardy tillers of the soil that seek our land to open up farms and develop the country," the newspaper contended that the club's activities should be directed to the protection of the "real cultivators of the soil," who are the "bone and sinew of the country."23 In March, after the formation of a new claim club in neighboring Elkhorn City, the Nebraskan offered a compelling defense of popular sovereignty and claim clubs:

These associations have been of vast importance to our western country, [and] their laws ... have had the effect of silencing the almost innumerable petty strifes, so common and natural to a new country. . . . The tide of emigration flowing westward, and the emigrants settling upon lands not yet in market, makes it absolutely necessary for them to protect each other in their respective claims, and "Squatter Sovereignty" becomes a respected and acknowledged right.24
The settlers' concerns for the security of their claims increased as summer approached. On May 19, 1856, the Omaha Claim Club convened at the State House in Omaha to revise its rules and regulations to ensure that lands were being put to productive use and were benefiting Nebraskans. The club resolved that any claimants who had yet to make fifty dollars' worth of improvements on their respective claims had only ten days to do so, and it forbade any "improvements" that detracted from the land's value, such as cutting logs and taking them to Iowa to sell. In defending these measures, the Nebraskan assured its readers that popular sovereignty, being the law of the territory, would "see that every man has his rights" and would secure the claims of settlers "as if they had the fee simple from Uncle Sam." In June, the club gathered at the State House after some had learned of "a danger that divers evil-disposed persons will attempt, by a secret pre-emption, to steal from their neighbors lands assured and pledged to them by the laws of this Association." The club vowed to protect every valid claimant in the lawful possession of his claim, as determined by the original lines, and whenever any nonmember took any step toward securing a preemption, the club promised to proceed to the premises, investigate the matter, and force the offending party to withdraw his claim or leave the country.

During the summer of 1856, apprehensions over the potential opening of the land office intensified, ultimately prompting the settlers of Douglas County to form a unified coalition to protect their claims. On July 14, 1856, delegates from the Bellevue, Omaha, and Florence claim clubs met for the purpose of organizing a structure through which the neighborhood clubs in Douglas County could offer one another mutual protection. The congregation resolved that the members of the different clubs would protect and defend one another in "sustaining and upholding the respective regulations of such associations, in case such aid should become necessary." With this consolidation, the Omaha Claim Club could raise up to 300 men at any one time to enforce its rules and regulations. Finally, on February 1, 1857, the land office at Omaha opened for the entry of preemptions. One resident, John M. Newton, described the tense atmosphere: "The farce of [the preemption act] is now 'played out' and ... may turn out a tragedy. For two or three weeks back many men have been jumping valuable and improved claims in the immediate vicinity of this town." The Omaha Claim Club responded to the increased threat to its members' claims by creating a vigilance committee to enforce its rules in a more efficient, forceful, and reliable manner. At a meeting on February 20, 1857, which also included delegations from the Florence, Bellevue, Elkhorn, and Papillion claim clubs, the settlers formed the committee to arrest violators of their claim laws and to bring them to justice. After impassioned speeches from prominent members such as Thomas B. Cuming, Andrew J. Hanscom, Jonas Seely, and John M. Thayer, the club's membership commanded this committee to hang any claim jumper who refused to submit to the club's authority. For several days thereafter, armed members of the committee, totaling between 150 and 200 men, filled the streets of Omaha and arrested violators of the claim laws. The Nebraskan described the impressive scene: "The streets of Omaha [were] thronged with men, whose armed and warlike appearance would seem to denote anything but peace within the borders of Nebraska." The settlers intended this demonstration of force to restrain "the claim jumping propensities of men" and to promote a feeling of security in the enjoyment of claims—which they hoped would serve to attract settlers to Nebraska.

Omaha residents justified the creation of the vigilance committee based on the gravity of the threat to settlers' homes and on the lack of effective legal remedies. The Nebraskan deplored the arrival of settlers "whose sense of justice and right is so obtuse that they are willing to rob the early settler of his dearly purchased home," and it regretted that "the tenure, by which real estate is now held in Nebraska, is so insecure and uncertain that ..."
the settler is compelled to defend his property by even an appearance of force." Some even defended the vigilance committee as promoting peace, despite its violent appearance. As the Nebraskan noted, "had small parties, of only eight or ten attempted to enforce the decrees of the Club, it is more than probable that fatal collisions might have been the consequence." As it was, every "claim jumper" withdrew his filing (if he had already filed) and vowed to obey the claim laws. In defending the committee's actions to a friend still residing in New York, one resident reasoned as follows: "Great deal of whiskey has gone up[.] There has been [nobody] killed as yet—only in talk. I think aside from jesting the proceeding has a very good effect on the stability of property here[.] It renders them very secure." Following the spring of 1857, the Omaha Claim Club became much less active throughout the next several months as the perceived threat to settlers waned. According to Jesse Lowe, Omaha's first mayor and a longtime member and captain of the club, after the land office opened and settlers in the Omaha claim district secured their lands, the club gradually grew weaker until all claims were secured. Many even complained when prominent members like Hanscom, onetime president of the club, and Andrew J. Poppleton, eventual mayor of Omaha, withdrew their active support for the club's activities after preempting their lands, for this violated the requirement that all members were to act in concert until all lands were entered.

While the Omaha Claim Club was largely inactive after the fall of 1857, in the summer of 1859, residents of Omaha once again banded together for the protection of claims, this time to develop a strategy for the approaching land sales, the first to be held in the territory. On the motion of Hanscom, the assembly elected Lowe as chairman and Joseph Barker Jr. as secretary. After some debate, it unanimously approved a resolution whereby the citizens of Omaha, on the day of the sale, were to proceed to the land office as a group and protect John McCormick, a prominent (and apparently trustworthy) Omaha businessperson, in bidding off the lands adjoining the city. The group also created an executive committee, with Lowe acting as chairman, to protect McCormick in carrying out the plan "in case of difficulty." Once the public sale was completed, the plan further called for McCormick to convey all lands to David D. Belden, the mayor of Omaha, in trust for all the claimants, and for Belden then to convey each lot to the proper claimant.

The citizens of Omaha executed their plan successfully. After this land sale in 1859, all claims that the Omaha Claim Club was formed to protect had been secured through legal means, making the club and other extralegal institutions no longer necessary. Accordingly, the period of vigilante rule in Omaha came to an end.

ONE OF THE GREAT CITIES OF THE WEST

At the same time that residents feared the threat apparently posed by speculators and newcomers, they also encouraged investment and immigration to their burgeoning metropolis. Many hoped that Omaha would become the greatest city in the American West, and so recognized the desirability of welcoming influxes of capital and laborers. Paradoxically, the same people that espoused their anti-Eastern, anti-speculator, and anti-newcomer views also encouraged investment and immigration.

The residents offered a glimpse of their grand vision for Omaha—and demonstrated their eagerness to make it a reality—as early as the first meeting of the Omaha Claim Club in July 1854. At this meeting, the club recognized the 320-acre claim of the Council Bluffs and Nebraska Ferry Company, an Iowa company that was already operating a ferry between Council Bluffs and the area already known as Omaha City, and it resolved that the members should "countenance and encourage the building of a city on said claim." The club considered the company well suited for this project because it had both the capacity and the desire to develop Omaha into a prosperous city. It had expended substantial amounts of
money in purchasing and operating the steam ferryboat at that location; it had established the territory’s first brickyard; it had surveyed and platted the claim into lots, blocks, streets, alleys, and outer lots; and it was eager to construct buildings and improvements, especially a large building to serve legislative, judicial, and other public purposes.43

Omaha residents immediately attracted the attention of the Eastern press. In October of 1854, just five months after the Council Bluffs and Nebraska Ferry Company erected the first modest building on the site of Omaha, the New York Herald predicted a promising future for the town: “Omaha City, Nebraska Territory, promises to be a second edition of Chicago and other flourishing Western cities, the sudden rise and prosperity of which have astonished the civilized world.”44 Upon realizing that Omaha would expand far beyond the 320-acre town site allowed under federal law, those holding claims to the 1,629 acres of land immediately adjoining the city formed the Omaha City Company to cooperate with the Council Bluffs and Nebraska Ferry Company in building and promoting the new town. Prominent members of the Omaha Claim Club served as officers in the company: James M. Love was president, Lowe was secretary, and Samuel S. Bayliss was treasurer.45

One of the lofty goals of the residents of Omaha was to see their young, almost non-existent city become the capital of Nebraska Territory. In late 1854 they constructed a large two-story building to house government offices, and they offered the building to be used for a court and legislature. Cuming, the territory’s secretary, its acting governor, and member of the Omaha Claim Club, accepted Omaha’s offer, and the first territorial legislature met at Omaha in January of 1855.46 The naming of Omaha as the capital of the Nebraska Territory sparked great excitement and optimistic predictions that Omaha would soon become a great city. The Nebraskan even boasted that “nothing [could] prevent Omaha City from becoming one of the greatest cities of the West, not excepting Chicago and St. Louis.”47

For Omaha to become a great city, however, citizens realized that they had to attract both investments and recurring waves of workers and farmers. In the spring of 1856 the Nebraskan exclaimed: “Now is the time for the Emigrant, the Capitalist, the Mechanic, the laborer, and public spirited men of all and whatever avocations to visit Nebraska . . . to find here the momentum and mainspring of their future fortunes.”48 Sure enough, citizens of Nebraska returned from the East in April with encouraging news regarding the arrival of laborers in the coming months:

They are coming from the East, from the North and from the South—coming with their strong arms and willing hearts—coming to make permanent homes upon our virgin soil—coming to develop the untold
wealth of our forests and our plains—coming to add virtue and intelligence, energy and wealth to our future State—coming to aid us in brightening the page which we shall occupy in our country's history.49

By June the population of Omaha had reached 800, more than double what it had been the previous year.50

Developments in Omaha in 1856 and early 1857 only seemed to confirm the optimistic forecasts of Omaha's future. The Nebraskan reported in April of 1856, “Every day is marked with progress and some new improvement is developed. Business in all departments is lively and prosperous. A large number of buildings, of a substantial order too and many of them large ones, are now being built or in contemplation, to be erected during the season.”51 Through the spring of 1857 people continued to flood into Omaha, causing the Omaha correspondent for the New York Herald to remark that “it is a safe prediction that no new country or Territory will settle more rapidly than Nebraska this season.”52

Omaha residents even used the existence and effectiveness of the Omaha Claim Club, itself purportedly committed to protecting the rights of original claimants against speculators and newcomers, to invite settlement and investment from the East. In early 1857 James M. Woolworth, a prominent member of the club, wrote Nebraska in 1857 to provide accurate and relevant information about the territory to attract settlement or investment from the East. In the work, he described the claim club's rules and defended their extralegal nature: “These regulations afford pretty safe possession to the actual settler; although it can hardly be doubted, that the law of the Territory conferring legislative authority on the clubs is unconstitutional. Still public opinion is more than law.”53 Woolworth acknowledged that the many Nebraska claim clubs operated to protect noncitizens as well as actual settlers, despite their protectionist rhetoric.54

Woolworth contrasted Omaha, which he considered a thriving city, with towns that existed only on paper. As he described it, the process of making a town in Nebraska, a territory mostly comprised of government-owned lands, was simple: any portion of the public lands selected as a site for a city or town was exempt from the operations of the Preemption Act of 1841, and town sites of up to 320 acres could be preempted by anyone.55 He noted that by 1857 the formation of towns had become quite common, as “every point possessing any advantage, or appearance of advantage, for the collection of a community, is taken up, and filed on, and held, as a town site, by a town company.”56 However, the majority of these towns, called “kiting towns,” were shams that existed only on paper and, according to Woolworth, “form[ed] a fancy stock which is worthy of Wallstreet itself.”57 In contrast, some towns like Omaha, he argued, were dependable investments and even grew to be much larger than the 320 acres protected by federal law, such that the lands in excess of the 320 acres had to be protected by other than legal means, such as through the operation of claim clubs.58

AS FAR AS THE LAND IS WORTH HAVING

Both the anti-speculator and pro-investment views, while seemingly contradictory, were based on an overall outlook that favored economic development above all else. However, the Omaha Claim Club often employed violence, not to protect its members' claims to land that was being put to productive use but to secure lands that were unimproved and sitting idle. Despite its requirement that claims be improved to receive protection, the Omaha Claim Club frequently defended unimproved lands against subsequent settlers. In May 1856, for instance, George “Doc” Smith was in the process of erecting a house on a seemingly unclaimed piece of land when a throng of up to a hundred armed men, under the direction of the Omaha Claim Club, suddenly appeared, pulled the structure to the ground, and threatened to throw him into the river if he refused to leave Nebraska. Smith complied and scurried across the river to Glenwood, Iowa, after which
he was informed his life would be in peril if he ever returned to Nebraska. The only claimant to that parcel of land was the Omaha City Company, but the land had not been entered, improved, or occupied for town purposes; the land lacked a bona fide settlement throughout this entire period.59

Likewise, in February 1857 the club's newly formed vigilance committee forced Jacob Shull to evacuate a previously unimproved piece of land. Before meeting the committee's wrath, Shull had squatted on land he correctly surmised to be government land, had built a house and many other buildings on it, and had filed for preemption in the land office at Omaha. Upon learning of this, the committee marched to Shull's land to arrest him. After Shull was "informed that he must withdraw his filing," the committee escorted him to the land office, where he proceeded to withdraw his claim.60 Shull was convinced to do so, however, only after members of the club burned down his house and all other buildings on the land and chased him through the streets of Omaha with bayonets.61

As Shull's case suggests, through 1856 and 1857 there remained large sections of land that, though remaining unoccupied, were closed to settlement by virtue of the claim laws. In May 1856, for instance, Alfred D. Goyer performed his duty as "Captain of the Regulators" by leading a large number of the Omaha Claim Club's members to visit four men who had erected a cabin and established the foundations for three more cabins on a 640-acre unimproved tract on the northern edge of Omaha's town site on land the Omaha City Company "owned." Goyer and his posse gave the men a simple ultimatum: either tear down their cabins or the cabins would be torn down for them. The men refused to give in, and their work was demolished. The Nebraskan used this incident to warn potential so-called claim jumpers that "if [they] persisted much longer there will be an example of that kind of lawless ruffianism."62

Indeed, much of the 3,500 acres that the Omaha City Company claimed as of 1857 remained unoccupied and unimproved, as did substantial portions of other members' claims.63 To secure protection for their unimproved land and ultimately to secure legal title through preemption, members of the Omaha Claim Club had to evade the club's requirements that land be occupied and improved. Members became so proficient at evading improvement requirements that some built a cabin on wheels so that they could move it from one claim to another and still comply with the requirement that each claim contain a house.64 It does not seem that such measures were even necessary to secure the club's protection, as many of the club's reported "arrests" protected claims that were clearly unoccupied and unimproved. Indeed, while the club's rhetoric focused on the need to protect members' homes from being taken by speculators, enforcement of its rules often involved burning or tearing down homes constructed on previously unimproved pieces of land.

The Omaha Claim Club's protection of unimproved claims allowed its members to reap the benefits from the great speculative boom that Omaha enjoyed during 1856 and most of 1857.65 As settlers poured into Nebraska, the demand for land near Omaha greatly increased, making it highly profitable for the Omaha City Company and other holders of claims to sell their vacant lots or unimproved farmlands. Many prominent members of the club engaged in the buying and selling of land claims and town lots and entered land on behalf of settlers and distant dealers for a commission. On April 29, 1857, the firm of Poppleton and Byers, for instance, advertised that it had for sale thirteen city lots in Omaha, twenty-five lots in other Nebraska towns, and eighteen shares of stock in town companies across Nebraska.66 By the middle of 1857, the seizing of quality lands by residents and speculators caused one traveler, a correspondent for the Ohio State Journal, to lament that "he found the whole country 'claimed' back from the Missouri river, as far as the land is worth having."67

Omaha's speculative boom, however, left it vulnerable to the financial panic that overwhelmed the country's financial systems in
late 1857. In the fall of that year, the *St. Louis Republican* reported that property in Omaha had greatly declined in value, and that lots that sold for $1,000 in early spring would no longer bring even $100. The newspaper also reported that Nebraska was left without money to conduct business. The *Nebraskan*, however, disputed these claims by insisting that “many of our lots have materially increased in value from last spring’s prices,” and that the financial situation in Nebraska was, in fact, much better than in the East.\(^68\) Unfortunately, the *St. Louis Republican* proved more prescient than the *Nebraskan*. By December of 1857 nearly all of Nebraska’s banks, including the Western Exchange Fire and Marine Insurance Company, Omaha’s largest bank, had failed, thus souring the speculative mood and causing real estate prices to plummet even further. One resident remarked, “All our bright prospects vanished in one hour, and we lost half of our most energetic citizens.”\(^69\) In May 1858 another resident regretted having held onto currency issued by a troubled Nebraska bank: “There is some building going on here, but of the small kind. Money is a thing that was, there is none here, nor none coming in. Our Currency is all Tekama Bank and that is redeemed nowhere.”\(^70\) A few days later he added that the “currency here is very uncertain and I am afraid that our Banks will close some day sooner or later.”\(^71\)

These difficulties caused the *Nebraskan* in July 1859 to criticize the preemption system and the reckless land speculation it promoted. According to the paper, Nebraska suffered more from land speculation and monopoly than any other state. The process followed a general pattern: the squatter established a preemption claim by fraudulently declaring that he resided there, before selling the land as soon as practicable to a speculator, who in due time sold the land to bona fide settlers for a substantial profit. In this way the preemption system, designed to protect the poor, in fact “operate[d] to oppress and extort from the real settler.” Worse yet, it “demoralize[d] the people, paralyze[d] industry and impoverish[ed] the country.”\(^72\)
rightly concluded to be federal public land and subject to entry under the federal preemption law. In early August, after Baker and Brown had already constructed houses for themselves and their families but before they had filed for preemption, the club stepped in to enforce its rules against them and to protect Pierce’s investment. Over the next few days, Pierce, who had traveled to Nebraska to resolve any outstanding issues regarding his land, and his agent, Herman Glass, a member of the club, repeatedly threatened Baker and Brown, making it clear that Pierce had invested too much money in the claims to allow them to take the lands from him. With the backing of the club, Pierce and Glass threatened to hang them or throw them in the Missouri River if they did not agree to deed the lands to Pierce after preempting.

Baker and Brown immediately grasped the full extent of their predicament. They knew, for instance, that Glass was reputed to have frequently made threats that “hanging was too good for a claim jumper.” Worse, they understood that the threats were not hollow: the club would, under Pierce’s “direction and control,” enforce its laws through personal violence, just as it had done so many times before. Moreover, both Baker and Brown recognized that Pierce was “a man of large means and of extraordinary influence” with the officers and leading members of the Omaha Claim Club. In their first meetings, Pierce made it clear that the most influential residents of Omaha, including Cuming, Hanscom, Poppleton, and Seely, were in his employ. Finally, Baker and Brown understood that, in stark contrast to Pierce, they themselves were men of “no means and few friends” who held little sway with the club’s prominent members. Accordingly, in fear for their lives, they agreed to deed their land to Pierce once they filed for preemption.

Even knowing the threat that the Omaha Claim Club posed to them, Baker and Brown had second thoughts. Accordingly, before filing for preemption, Baker and Brown sought the advice of friends. Based on the club’s reputation as “a terror in the community to all those who attempted to jump or take any of the claims so held by others,” O. P. Ingles and J. W. Paddock both recommended that it would be futile to resist the claim club. Similarly, John Smith, Baker’s brother-in-law, characterized their options as follows: “to be driven out or forced to leave the Territory, thereby losing [sic] all his improvements and rendering his family destitute, loose [sic] his life, or deed the land was the only alternative.”

Pierce, Glass, and a few others caught up with Baker and Brown on August 10, 1857, the day the pair filed for preemption, to reiterate their earlier threats. Immediately before this encounter, Glass had circulated handbills calling for a meeting of the Omaha Claim Club to enforce its rules and to compel Baker and Brown to forfeit the land, and he had met with Joseph Barker, the club’s president, who promised to call the meeting. Thus, Pierce could inform Baker and Brown that the vigilance committee would be after them within twenty-four hours if they failed to deed the land as they had agreed, and he could credibly threaten to have them hanged or drowned. Accordingly, Baker and Brown deeded the land to Pierce for no consideration in return.

On September 7, 1860, after the Omaha Claim Club had disbanded and was no longer a threatening presence in Omaha, Baker and Brown filed actions in federal court challenging the validity of their deeds to Pierce. Represented by the law firm of John Redick, himself a onetime member of the club, and Clinton Briggs, the mayor of Omaha, the plaintiffs pursued their cases all the way to the U.S. Supreme Court, which voided the deeds based on the common law of legal duress. Specifically, the Court cited the “well-settled law that moral compulsion, such as that produced by threats to take life or to inflict great bodily harm, as well as that produced by imprisonment, is sufficient to destroy free agency, without which there can be no contract.” The Court condemned not only the coercive and violent actions of the Omaha Claim Club but also its purpose, which the Court determined to be the nullification of the land laws of the United States “to the end that the members of the club, who were engaged
in land speculations, might hold and control the public lands in the vicinity of Omaha to the exclusion of actual settlers.98

During the Nebraska Territory’s early years, the most prominent and powerful residents of Omaha used the Omaha Claim Club to protect and promote their own speculative interests in unimproved land. Even as these residents condemned the evil speculator from the East, they invited both investment and settlers to
Omaha, which served their interests by driving up the value of land at an astonishing rate. Far from promoting economic equality, the club nullified federal laws regarding land distribution to further the speculative interests of its members and even became the vehicle of the Eastern speculators whose threat justified its existence in the first place. As a result of the club's activities, by June 1857, just a few months after the Omaha land office opened for preemptions, new settlers struggled to locate desirable pieces of land for preemption, as any land of value was already claimed.

As Lincoln and Douglas debated the meaning of popular sovereignty through the summer and fall of 1858, white settlers in the Kansas and Nebraska Territories had already defined the term for themselves. In both territories, the principle of self-government meant rule through violence and fraud. Far from constituting distortions of popular sovereignty resulting from a unique blend of historical and political forces, including most notably the national debate over the extension of slavery, the violence that was common to both territories in fact demonstrated the true nature of democracy unrestrained and unchecked by formal legal procedures and protections. Thus, Turner was correct when he cited claim clubs and other western vigilante groups as manifestations of Western democracy, but this democracy in no way promoted the principles of economic equality and individual liberty. The most profound and accurate articulation of the doctrine of popular sovereignty, as it was actually practiced, came not from Lincoln or Douglas, two of the great politicians of the era, but from a resident of Omaha, Nebraska Territory, who dismissed the authority and relevance of both the Constitution and the federal government with a simple statement: “Still public opinion is more than law.”

NOTES


3. An Act to Organize the Territories of Nebraska and Kansas, U.S. Statutes at Large 10, 277 (1851–55).


5. Ibid., 20.


7. Etcheson, Bleeding Kansas, 7–8.

8. Ibid. For other relatively recent works challenging the centrality of slavery to the fighting in Kansas, see, e.g., H. Craig Miner and William E. Unrui, The End of Indian Kansas (Lawrence: Regents Press of Kansas, 1978) (placing Bleeding Kansas in the broader context of the dispossession of Indian lands and thereby emphasizing this feature of early Kansas history over the issue of slavery in precipitating the social instability that epitomized Bleeding Kansas); Gunja Sengupta, For God and Mammon: Evangelicals and Entrepreneurs, Masters and Slaves in Territorial Kansas, 1854–1860 (Athens: University of Georgia Press, 1996) (arguing that the conflict, as it pertained to the slavery issue, was more about myth and public perception than about practical concerns, that proslavery and antislavery partisans often joined forces in the battle for the control of land and resources, and that the real losers of Bleeding Kansas were not slaveholders, but small farmers, laborers, and blacks). Still, the myth of “Bleeding Kansas” as being predominantly, if not exclusively, about slavery continues to influence scholarship. See Thomas Goodrich, War to the Knife: Bleeding Kansas, 1854–1861 (Mechanicsburg, PA: Stackpole Books, 1998).

Violence: Historical Studies of American Violence and Vigilantism, ed. Richard Maxwell Brown, (New York: Oxford University Press, 1975). For the purposes of this article, I borrow Brown’s definition of “vigilantism” as referring to “organized, extralegal movements, the members of which take the law into their own hands.” Ibid., 95–96. See also William C. Culberson, Vigilantism: Political History of Private Power in America (Westport, CT: Greenwood Press, 1990). This definition excludes incidents of mob violence or rioting that lack any organized structure and examples of individuals “taking the law into their own hands” without the broad support of a wider community. While vigilantism is often associated with brute violence, vigilance committees also exerted social control through the use of other means, including persuasion, coercion, and intimidation, sometimes without ever engaging in violence. While violence was not an essential feature to vigilantism, one common feature of vigilante groups was the desire to protect and, if need be, reassert community structure, including especially “the values of sanctity of property and law and order.” Brown, “Patterns of American Violence,” in Strain of Violence, 22.


12. Ibid., 18.

13. Frederick Jackson Turner, The Frontier in American History (New York: Henry Holt, 1921), 212. Similarly, James Willard Hurst, in a highly influential legal-historical essay, cited one Wisconsin claim club as emblematic of nineteenth-century American law’s two working principles: that law should foster broad opportunity for the release of individual creative energies (i.e., liberty) and that law should utilize the resources of the community to shape the environment so as to provide men with even more liberty (a greater range of choices) than they would otherwise have. James Willard Hurst, “The Release of Energy,” in Law and the Conditions of Freedom in the Nineteenth-Century United States (Madison: University of Wisconsin Press, 1956). But see Gates, Fifty Million Acres (arguing that the management—or rather, mismanagement—of lands on the “frontier,” one feature of which was the scramble for public lands, contributed to the perversion of democracy rather than its vindication).


16. This imbalance has roots going back to the 1850s, when national attention to events in Kansas transformed what was formally the Nebraska-Kansas Act into the Kansas-Nebraska Act. A notable recent effort to ameliorate this imbalance and to confront the relative lack of scholarly attention to both the impact of the organizing act on Nebraska (and Nebraskans) and the social and economic history of Nebraska Territory is John R. Wunder and Joann M. Ross eds., The Nebraska-Kansas Act of 1854 (Lincoln: University of Nebraska Press, 2008).


20. Ibid.


22. Ibid.


27. “Claim Meeting,” Omaha Nebraskan, July 2, 1856.


30. John M. Newton to John B. Kellogg, February 24, 1857, John McConihe Papers, MS 308, Box 1, Folder 1, Archives and Special Collections, University of Nebraska–Lincoln Libraries.
32. Newton to Kellogg, February 24, 1857.
35. “Vigilance Committee.”
36. Ibid.
37. Ibid.
38. Newton to Kellogg, February 24, 1857.
40. Ibid., 37.
41. “Our City Titles,” Omaha Nebraskan, July 2, 1859.
42. Omaha Arrow, July 28, 1854.
43. Ibid.
48. Ibid.
51. “Our City,” Omaha Nebraskan, April 30, 1856.
52. “Affairs in Nebraska: Our Omaha City Correspondence,” New York Herald, April 30, 1857.
53. Woolworth, Nebraska in 1857, 51.
54. Ibid.
55. Ibid., 45.
56. Ibid., 51.
57. Ibid., 52.
58. Ibid., 52.
59. A. Sorensen, Early History of Omaha or Walks and Talks among Old Settlers: A Series of Sketches in the Shape of a Connected Narrative of the Events and Incidents of Early Times in Omaha Together with a Brief Mention of the Most Important Events of Later Years (Omaha, NE: Omaha Bee Publisher, 1874): 100–103.
63. Sorensen, Early History, 103.
64. Rowley, “New City.”
66. Omaha Nebraskan, April 29, 1857.
68. “Property in Omaha City,” Omaha Nebraskan, October 28, 1857.
69. Graebner, “Nebraska’s Missouri River,” 222.
70. John McConihe to John Kellogg, May 1, 1858, McConihe Papers.
71. McConihe to Kellogg, May 4, 1858.
73. Transcript of Record, Baker v. Morton, 36, 39.
74. Ibid., 37.
77. Transcript of Record, Baker v. Morton, 52.
78. Ibid.
79. Ibid., 2–3.
80. Ibid., 15, 22–23.
81. Ibid., 2–3.
82. Ibid., 28.
83. Ibid., 52.
84. Ibid., 2–3, 20, 23, 25–26, 43, 52.
89. Woolworth, Nebraska in 1857, 51.