

# Civil War Book Review

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## John Brown's Trial

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## Review

DeLombard, Jeannine Marie

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**McGinty, Brian** *John Brown's Trial*. Harvard University Press, \$27.95 ISBN 9780674035171

### The Focus on John Brown in Court

"A community of laws is always on trial in the courtroom of a republic of laws," literary scholar Robert A. Ferguson observes in his most recent foray into legal-cultural history, *The Trial in American Life* (2007). The comment was inspired by the trial of radical abolitionist John Brown for his October 1859 raid on the arsenal at Harpers Ferry, which put Virginia law and that of the entire Southern legal regime under intense national and international scrutiny. Brown, backed by an interracial force of twenty-one armed supporters, had begun his raid on slaveholding Virginia on 16 October 1859; two days later he had been captured by U.S. Marines; exactly a week afterward the severely wounded Brown was carried to court on a cot for his preliminary hearing; and eight days after that he was sentenced to death, convicted of treason, murder, and conspiracy with slaves to rebel. (His surviving captured coconspirators were subsequently tried and received death sentences as well.) Building on Ferguson's observation in his more expansive (albeit less incisive) treatment of Brown's trial, attorney and author Brian McGinty attributes the national "fascination with trials" throughout U.S. history to the fact that, in contrast to their English counterparts, "American citizens were interested in how justice was meted out not only *to them* but also *in their name*. Trials thus assumed a more central role in the body politic" (2,4).

The very historicity of Americans' popular legal spectatorship has enabled authors like McGinty to follow in the footsteps of their editorial predecessors and capitalize on the national fascination with forensic drama by repackaging easily available trial accounts in updated narrative histories of sensational or famous trials. (Since the eighteenth century, editors and publishers have supplemented the newspaper coverage through which many Americans followed

dramatic trials with stand-alone pamphlets or books, often compilations of previously published materials.) And, like their antecedents, many of these authors have focused on the uniquely combustive interaction of race and law in American culture. Recent examples include Mark S. Weiner's *Black Trials: Citizenship from the Beginnings of Slavery to the End of Caste* (2004); John Bailey's *The Lost German Slave Girl: The Extraordinary True Story Of Sally Miller And Her Fight For Freedom in Old New Orleans* (2004); and Steven Weisenburger's *Modern Medea: A Family Story of Slavery and Child-Murder from the Old South* (1998). The best of these combine exhaustive historical research and informed critical analysis to make newly accessible, relevant, and readable the legal proceedings of a bygone era. Others offer romantic mystification in place of historical context. Claims of discovering hidden or buried documents in musty archives tend to obscure the fact that many source texts are widely known to scholars and often accessible to lay readers with minimal effort. (Bailey, for example, begins *Lost German Slave Girl* with a dramatic tale encountering the titular character in "a volume of the Louisiana Law Reports of 1845" – saving for the endnotes an acknowledgment that the pamphlet version of the case appears in Paul Finkelman's reprint series, *Free Blacks, Slaves, and Slaveowners in Civil and Criminal Courts* (1988) and is thus available in virtually any university library.) This year's sesquicentennial anniversary of the Harpers Ferry raid makes it an auspicious time to repackage the Brown trial materials.

Drawing heavily on contemporary newspaper and pamphlet coverage, McGinty recounts the dramatic proceedings from the informed perspective of a trained lawyer. Quickly retracing terrain already covered by comprehensive studies of Brown – the biographies by Stephen B. Oates and David S. Reynolds, as well as Finkelman's indispensable edited collection, *His Soul Goes Marching On: Responses to John Brown and the Harpers Ferry Raid* (1995) – McGinty devotes his own volume to the trial itself. Given that most who have written about Brown's trial have been English professors, not lawyers, McGinty makes valuable contributions when he brings his legal training to bear on these well-thumbed, oft-quoted documents. Particularly noteworthy is McGinty's clear, concise treatment of the vexed question of jurisdiction raised by New York resident Brown's embarkation from a rented Maryland farm to attack a Federal arsenal across the Virginia border. Also helpful is McGinty's reminder that the unseemly haste that characterized Brown's trial arose not only from fears that the accused would either be lynched or rescued before the trial's conclusion, but also

from the purely coincidental time pressure placed on the proceedings by the circuit court calendar. (A delightful – and unusually fresh – tidbit offered by McGinty is an article in the Baltimore *Sun* holding Brown himself accountable for the summary justice he received: “It so happened that Brown selected a time for his demonstration immediately antecedent to the regular term of the court,” the *Sun* self-righteously huffed [276]). McGinty’s concluding survey of the trial’s reception history in the legal academy over the past hundred years is an equally valuable contribution.

McGinty’s claims for this work of popular history seem modest enough. Presenting his book as a legal historical narrative, McGinty expresses “hope that scholarly readers will profit from its insights and revelations and that general readers will find enough human interest in the story to keep the pages turning” (19). The difficulty lies in the “insights and revelations” McGinty claims to offer. Acknowledging that he is returning to well-trod ground, McGinty maintains that few scholars have “paid more than cursory attention to the trial that followed so swiftly on the heels of Brown’s Harper’s Ferry raid” (1). (The text, although not paratextual materials like the book jacket, repeats the common error of presenting the town’s name in the possessive.) The insight, if not revelation, that McGinty goes on to offer would appear to be his claim that the trial’s importance lay in “its effect on American history, the forces it unleashed, and the very real consequences that flowed from it” (16). Correcting “modern historians” who “assume that it was the violence at Harper’s Ferry that unleashed the forces that led to war,” McGinty asserts his conviction that “these forces were set in motion by the trial that followed the raid, not by the raid itself, and that it was the eloquence and courage that Brown exhibited during his trial, much more than the recklessness he displayed in the raid, that transformed his public image from that of a violent fanatic into one of a public hero. Without the trial, the violence at Harper’s Ferry would be dismissed (and generally condemned) as an aberrant exercise in criminality” (17).

Anyone familiar with Ferguson’s work, however, will recognize that this argument originates with him, not McGinty. Here’s Ferguson: “Had Brown been killed during his raid on Harpers Ferry, as he nearly was, he would almost certainly have been dismissed as a fool and an aberration in the midst of sectional strife. It was what happened to John Brown *during* his trial that made him a byword in American history. To understand how Brown materialized as a national figure is to see how a major trial creates personality and changes public opinion in dramatic ways” (*The Trial in American Life*, 118). Ferguson, to be

sure, did not make Brown's trial the focus of a full-length book. But initial presentation of this argument in an influential 1994 article in the *Yale Journal of Law and the Humanities* and then as a chapter in his 2007 monograph, makes it hard to make a case for scholarly neglect of the trial's significance. (In the interim between Ferguson's article and his book, Franny Nudelman took Brown's self-fashioning at the trial as the point of departure for her inquiry into the idealization of mass death in *John Brown's Body: Slavery, Violence, and the Culture of War* [2004]).

This is not, I regret to say, disinterested criticism. Noting that "slavery was the real accused in the Charlestown trial, not Brown," McGinty concludes his study with the claim that, "viewed in the long lens of history, it is clear that John Brown was not really on trial in Charlestown. Slavery was" (230, 287). I could not agree more: that's why a chapter on Brown's trial serves as the conclusion to my own book, *Slavery on Trial* (2007).

Populizers of cultural history do a tremendous service by making obscure or arcane materials and topics newly interesting or legible to a lay reading public. The most scrupulous work closely with scholars to ensure the integrity of their work – one thinks here Adam Hochschild's *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire's Slaves* (2005), in effect a brilliant rewriting of J. R. Oldfield's *Popular Politics and British Anti-Slavery: The Mobilization of Public Opinion against the Slave Trade, 1787-1807* (1998). They do a disservice, however, when they cast more careful, thorough work into the shadows so as to thrust their own hastily produced volumes into the spotlight.

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**Civil War Book Review regrets that an error was made in a Winter 2010 review of Brian McGinty's *John Brown's Trial*. We would like to retract the criticism of Mr. McGinty for his usage of "Harper's Ferry" in Jeannine Marie DeLombard's review; the review incorrectly neglected to take into account the endnote in which Mr. McGinty details his usage over the more common "Harpers Ferry."**