
Fugitive Slave on Trial: The Anthony Burns Case and Abolitionist Outrage. By Earl M. Maltz. (Lawrence: University Press of Kansas, 2010. Pp. x, 174. $34.95 cloth; $17.95 paper.)

In 1998, Albert J. Von Frank argued in his fascinating book The Trials of Anthony Burns: Freedom and Slavery in Emerson’s Boston that the brouhaha surrounding the 1854 Fugitive Slave Law hearing and the extradition of escaped slave Anthony Burns amounted to a “pocket Revolution” in which transcendentalist Boston joined radical abolitionism to change the face of opposition to slavery forever. Gordon S. Barker attempts to refute this analysis of the protorevolutionary impact of Burns’s rendition, emphasizing quite rightly that most of Boston remained indifferent or hostile to antislavery arguments and that the ultra-abolitionists, tainted with racial condescension of their own, proved to be “lackluster” antislavery warriors who went home to their dinner parties instead of charging the courthouse to liberate Burns. Far from bringing about a pocket revolution, Barker concludes, the case changed little. In the South, however, Barker stresses, the Burns case produced a call to action. The fact that so many federalized troops were needed at such high cost to secure Burns when he was convicted and marched to the port for shipment back to Virginia demonstrated a rapidly growing antislavery conspiracy that, Southerners insisted, had to be met with secession.

Barker cautions us against taking the Burns case in itself as revolutionary; neither does he suggest that the trial was another marker on some inevitable road to secession and emancipation. Things looked far less clear than that in 1854. Despite the fundamental and growing conflict over slavery, the nation remained united enough to agree to the Compromise of 1850, including the strengthened Fugitive Slave Act that the Burns case, among others, tested in an incendiary manner.

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But the consequences of the Burns case hardly stopped with the rendition of Anthony Burns to Richmond. The political dialectics it unleashed remained alive and contested for four years, playing a significant part in the deepening sectional gulf, albeit one that developed irregularly. Where Barker stints somewhat on historical contextualization, Earl M. Maltz, an insightful and shrewd legal historian, contributes important new thinking to our understanding of the wider meanings of Burns’s trial.

Maltz frames his discussion around two “heroes”: Burns and Edward Loring, the Bostonian slave law commissioner who heard the case and sent the fugitive south. Both figures became part of a much wider exchange of sectional outrage, pawns in an ideological battle of major proportions, the complexities of which Maltz teases out with patience and fair-mindedness.

During Burns’s first night in prison, an abolitionist mob, incited by Theodore Parker, the muscular and populist transcendentalist preacher, stormed the courthouse—to be turned back only after someone shot down James Batchelder, one of the temporary deputies guarding Burns. This highly unpopular violence led to indictments for murder and undercut abolitionists’ claims to the moral high ground. Discouraged, they pulled back from more direct action, a tactical complexity Barker fails to analyze.

As the hearing took place, several conservative Whigs put together $1,200 to buy and free Burns. They were not joined by abolitionist leaders, who opposed such purchases on principle—a fact that Barker emphasizes. Maltz, however, demonstrates that Charles F. Suttle, the slaveholder involved—under pressure from Benjamin Hallett, a prominent Boston lawyer and Democrat—refused the money on the grounds that Batchelder’s “blood must be avenged” (p. 75). Hallett was a law-and-order man who sought to turn popular opinion against the abolitionists and to placate the South through a powerful public demonstration of the rendition process. After Burns was returned to Richmond, Suttle sold him for $903 to David McDaniel, a North Carolina slave trader, who, when approached by those same conservative Boston Whigs, promptly flipped him for $1,300. Many agendas were at play here!

Coming back north as a free man, Barker tells us, Burns refused P. T. Barnum’s offer of $100 per week to tell his story at Barnum’s New York Museum, explaining that he did not want to be exhibited “like a monkey” (p. 57). Instead, he went on to Oberlin College and then to St. Catherines, Ontario, where, after serving the fugitive
slave community as a Baptist minister, he died of tuberculosis in 1862.

Barker concludes his study with an interesting discussion of the sizable—and, in his analysis, highly militant—escaped slave colony in St. Catherines, though he makes few direct references to Burns, probably because little evidence has survived. Barker fails to quote, as do Von Frank and Maltz, the curious document Burns signed shortly before his death: “Anthony Burns, ex-Abolitionist: now thinks Lee is the better man.”

Well might Burns have felt deserted by the Boston abolitionists who raised such a hue and cry over him back in 1854 only to drop him and to move on to collateral issues. Maltz understands, however, that agitators like Parker, Wendell Phillips, Thomas Wentworth Higginson, and William Lloyd Garrison continued their crusade by seizing every opportunity the evolving political situation presented. In this instance, they convinced the authorities to drop the indictments of the presumed killers of James Batchelder, stridently keeping the case alive so that no jury would have convicted them were they tried. And with persistent intensity as well as highly personal vituperation, they verbally assaulted Edward Loring in the press and in the legislature. They browbeat the Harvard Corporation into nonrenewal of Loring’s contract as a law school professor, and in the state legislature they pushed through bills to dismiss him from his judgeship in the probate court of Massachusetts, finally succeeding after two gubernatorial vetoes. At the same time, they rammed through a powerful personal liberty bill that would have made any more renditions unlikely. As it happened, no slaveholder gave it a run in Massachusetts after the Burns trial. Burns’s personal usefulness passed as the larger assault on Loring and the fugitive slave process continued. Such was the long-term outcome of the Burns affair.

Maltz and Barker would agree that Burns was a tragic figure in this story, but for Maltz, Loring was a second victim, pilloried for vindicating the concept of the rule of law that undergirds a proper legal system. The Fugitive Slave Act was the law of the land, and Loring experienced a drubbing at the hands of the abolitionists—and, indeed, the majority of the legislature of Massachusetts—for defending that principle of justice. He was fired from his judgeship in 1858, only to be promptly placed on the federal Court of Claims by the essentially proslavery Buchanan administration, ending his long season as public enemy number one with a whimper rather than a bang.
If Maltz believes that Loring was unjustly attacked because he defended an honorable tradition of the rule of law, he cannot square that form of moral probity with the inescapable contradiction of defending the legal bulwarks of an unjust and immoral slave system. Quite rightly, he leaves us stuck on the horns of that tragic American dilemma. Only a civil war would resolve the fundamental incongruity inherent in the existence of slavery in a presumably democratic society, and even that terrible war would not eradicate the systematic racial injustice that long outlived emancipation.

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The Civil War gave Winslow Homer his professional break. Raised in Cambridge, Massachusetts, he relocated to New York to seek better opportunities as a young illustrator. Without the war, he might well have had a perfectly successful career in illustration, and he might have become a respected painter to boot. His experience of the conflict, however, turned him into, well, Winslow Homer.

Homer provided war illustrations for readers of northern magazines, but he also began to paint during this time. His Civil War canvases—such as Home Sweet Home, Sharpshooter (both 1863), The Bright Side (1865), and Prisoners from the Front (1866)—are among the few powerful paintings generated by a conflict better known to us through photographs. These four remain familiar to us; Near Andersonville, which Homer rendered just at the end of the fighting (1865–66), has suffered from a comparative neglect—the work, for example, wasn’t even included in the large Homer retrospective at the National Gallery in 1995. Peter Wood, an emeritus professor at Duke University and among our most distinguished American historians, rectifies that neglect in his jewel of a book, Near Andersonville: Winslow Homer’s Civil War.

This study began as a series of Nathan Huggins Lectures at Harvard, and it reads just like a really good lecture: engaging, informative, easy to listen to, and fully thought provoking. Wood, no stranger to Homer, having coauthored a study of the painter’s images