

contention appears to be true of that between the lower North and Border South before the Civil War, but some attention to comparisons and contrasts to this claim would bring important depth to Harrold's analysis and help his story resonate more broadly.

Harrold maintains that his most important contribution is to see the border war in its "entirety" (2). Overall, he succeeds in this goal of capaciousness, although it is not always clear that the events described cohere into a war. There are also gaps in his coverage. For example, in the preface he notes that Iowa was included in the Lower North states (after statehood in 1846), yet Iowa does not merit an entry in the book's index. This would mostly be a concern to those particularly interested in the Iowa story, and obviously no one volume can cover every place equally. Yet bringing Iowa more specifically into the story would have been a way for Harrold to have more fully considered eastern and western variations along the border between the North and the South.

Fugitive Justice: Runaways, Rescuers, and Slavery on Trial, by Steven Lubet. Cambridge, MA: Belknap Press of Harvard University Press, 2010. 367 pp. Notes, index. \$29.95 cloth.

Reviewer H. Robert Baker is assistant professor of history at Georgia State University. He is the author of *The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War* (2006).

Steven Lubet's *Fugitive Justice* provides a well-paced narrative of the 1850s courtroom trials in which rescuers and runaways were prosecuted by the federal government. Lubet argues provocatively that the nature of these trials shifted over time, with lawyers becoming increasingly more willing to argue against the legitimacy of the Fugitive Slave Act and of slavery itself. The "higher law" argument went "from an abstract inspiration to an unapologetic legal defense" (8).

Lubet begins by offering the reader background on the subject of slavery and the Constitution. The most contentious issue at the Constitutional Convention was the compromise over slave representation embodied in the three-fifths clause; the Missouri crisis of 1819–1821 shifted the debate to the question of how to regulate the extension of slavery into the territories. That issue proved vexatious over time, particularly after the admission of Texas and victory in the Mexican-American War added significant slave territory to the Union.

Fugitive slaves also became an issue. A federal fugitive slave law had been on the books since 1793, but the bulk of slave rendition was done either privately or through state courts and as such depended

on cooperative state laws. After the 1820s, free states added copious protections for free blacks, making rendition more cumbersome for slaveholders. Compliance with these “personal liberty laws” was not optional, and flouting them carried stiff penalties. In 1842, in *Prigg v. Pennsylvania*, the U.S. Supreme Court declared the personal liberty laws unconstitutional. The ruling proved a double-edged victory for slaveholders. No longer threatened by punitive state laws, neither could they count on state officers for assistance. Calls for a new fugitive slave law rang from the South, and a new statute offering broad powers was worked into the Compromise of 1850.

The heart of this book recounts several important trials that took place under the new Fugitive Slave Act of 1850. Lubet begins with the trials for treason in Christiana, Pennsylvania, brought against those who arrayed against enforcement of the Fugitive Slave Act of 1850. He follows with descriptions of legal proceedings in Boston and Syracuse in 1850–1851. Thereafter tempers cooled and rescues abated until 1854, after passage of the Kansas-Nebraska Act opened “free territory” to potential slave settlement. Northerners reacted fiercely, forming a viable third party out of anti-Nebraska rage. In Boston, the rendition of Anthony Burns led to a botched rescue attempt that left one peace officer dead. In 1858–1859 the rescue of a fugitive from a party of slavecatchers in Ohio (the Oberlin-Wellington rescue) led to a famous set of prosecutions on the eve of the Civil War that ultimately resulted in the release of the rescuers. As one contemporary proslavery newspaper put it, “at last the Higher Law was triumphant” (314).

Lubet proves no mean storyteller. He paces the courtroom drama well and gives memorable accounts of the characters. Most impressively, he brings to life the more pedestrian elements of courtroom procedure that often prove so crucial. In the 1854 Boston hearing concerning the fugitive Anthony Burns, for instance, Commissioner Loring allowed a witness to relate a conversation with the fugitive despite a statutory bar on admitting the fugitive’s testimony. The moment prompted the antislavery lawyer Richard Henry Dana (not at that point representing Burns) to step forward and ask the court for a continuance and to consider appointing him counsel. The operation of the Fugitive Slave Act put the spotlight on procedural fairness.

Lubet’s thesis — the notion that the “higher law” defense matured and eventually won the day — may be overdrawn. He makes too much of the fact that no higher law defense was trotted out during the Christiana treason trial of Caster Hanway. As Lubet himself acknowledges, “higher law” arguments had been rehearsed in runaway cases for decades. And such arguments played alongside prosaic defenses (such as

the person at the bar is not the fugitive you seek) and assaults on the constitutionality of the Fugitive Slave Act. Lubet's analytical structure — focusing on a few principal cases rather than exhaustively researching them all — renders him incapable of providing a definitive analysis of how legal defenses were deployed and why.

Pointing out this book's limits should not blind us to its strengths. Lubet's engaging narrative brings us into the courtrooms of the 1850s, allowing us a glimpse of fundamental notions of procedural due process and how antebellum Americans wrangled with the constitutional duty to return runaways to slavery. He brings details to life that have often been ignored in scholarly treatments of the Fugitive Slave Act. That is itself an important contribution.

We Saw the Elephant: Overland Diaries from the Lander Trail, by Peter T. Harstad. Lakeville, MN: Jackpine Press, 2010. xii, 219 pp. Illustrations, maps, notes, appendix, index. \$20.00 paper.

Reviewer J. Thomas Murphy is professor of history at Bemidji State University. His Ph.D. dissertation (University of Illinois, 1993) was "Pistols Legacy: Sutlers, Post Traders, and the American Army, 1820–1895."

On July 13, 1859, an Oregon-bound wagon train from Brooklyn, Iowa, traversed the Sweetwater River. "Here we expected to cross the river," Charles J. Cummings recorded in his diary, "but we found there was a new Military Rode been opened, called Lander's Rout [*sic*], which saved 60 miles before striking the other rode at Fort Hall, a distance of 260 miles. We thought it best to take it" (41). Assigned by the Department of the Interior to build a wagon road, Frederick W. Lander had completed his project in 1858 and anticipated the initial travelers. "You must remember that this new road has been recently graded," he noted in his emigrant guide, "and is not yet trodden down" (18). But overlanders would avoid the desert and pay no tolls, face "fewer hard pulls and descents," and have access to grass, water, and wood (18).

Cummings was among 13,000 migrants who used the cut-off that first year, and his journal is among 45 collected by Peter T. Harstad to commemorate the Lander Trail's history from 1859 through 1864. Each diary provides insight into trail life, a description of the landscape, and a record of events — whether daily mileage or an Indian scare. The book includes drawings by Karyn E. Lukasek and two essays: Harstad's "The Lander Trail," reprinted from *Idaho Yesterdays* (1968), and Mont E. Faulkner's "Emigrant-Indian Confrontation in Southeastern Idaho, 1841–1863," from *Rendezvous: Idaho State University Journal of Arts and Letters* (1967). Trail buffs will welcome this study.