

## Trial of John Brown

TRIAL OF JOHN BRO??

A REVIEW OF THE TRIAL OF "Ossawatomie" Brown, the Insurre? IN REPLY TO THE CRITICISM OF Dr. HERMAN VON HOL? ( *Privy Councilor and Professor in the University of Freiburg* IN HIS WORK ENTITLED " *The Constitution and Democracy of the Unite?* BY GEN. MARCUS J. WRIGH?

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*Reprinted from Southern Historical Society Papers, Rich?*

RICHMOND, VA.: WM. ELLIS JONES, BOOK AND JOB PRINTER.

1889.

### **TRIAL OF JOHN BROWN.**

ITS IMPARTIALITY AND DECORUM VINDICATED.

The death of Hon. Andrew Hunter, which recently occurred at his residence at Charlestown, in Jefferson county, West Virginia, has revived interest in the trial of John Brown and his associates, in which Mr. Hunter bore so conspicuous and distinguished a part.

A well-known German writer, Dr. Herman Von Holst, Privy Councilor and Professor in the University of Freiburg,\* has announced that Brown's trial was not a fair and impartial one. Dr. Von Holst has written several valuable and able works on the institutions of this country, and has usually been careful and, for a foreigner, singularly accurate in his statements. In the judgment instanced, he has erred—I assume not wilfully, but in

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ignorance of the facts. In proof of this, I give the following account of the celebrated trial from notes taken at the time.† The crime for which Brown was tried, convicted, and executed may be briefly summarized—passing over the troubles in Kansas and on the Missouri borders (in which Brown played no inconsiderable or law-abiding part) growing out of the agitation of the slavery question.

\* *The Constitution and Democracy of the United States*. Von Holst.

† *The Life, Trial, and Conviction of Captain John Brown, known as "Old Brown of Ossawalomi,"* with a full account of the Attempted Insurrection at Harper's Ferry, Compiled from Official and Authentic Sources. New York: R. M. Dewitt. See also a Report of Colonel R. E. Lee to the War Department, of date October 19, 1859— *Rep. Com. No. 278, XXXVI Congress, First Session*—which document gives also the "Provisional Constitution and Ordinance for the People of the United States," devised by Brown.

In August, 1859, he began his operations to take possession of Harper's Ferry, in Virginia, with the avowed purpose of freeing the slaves. There was an arsenal there, and a large number of guns stored in it. His confederates have been stated as being in number twenty-two besides himself; of these, six were colored men.‡

‡ The venerable Judge Richard Parker, who presided at the trial, writes, of date February 19, 1889, as to this computation: "There is at least doubt, as on the trial a witness proved he had counted the party as they crossed the bridge at the Ferry, and they were from seventy-five to one hundred in number, and another witness stated that he saw at least one hundred of them in the town—also Brown stated that he expected large reinforcements."

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On the 16th of October, with eighteen of his men, he proceeded to Harper's Ferry, broke down the Armory gate, and overpowered the watchman on duty. By midnight he had distributed his men as patrolmen over the village. He had sent out men to capture and

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bring in neighboring farmers with their negro slaves, and had a number of the citizens of the place as prisoners.

When the citizens became informed of what had happened, they hastily armed themselves, and several volleys were exchanged, resulting in the killing of a number of persons, several of them being citizens not engaged in the matter. Brown with his force entered the engine-house (the ruins of which are still to be seen, and which is remembered as "John Brown's Fort"). A detachment of marines had been ordered from Washington under command of Colonel Robert E. Lee, and immediately upon their arrival the "Fort" was surrounded. Brown's force in the "Fort" had been reduced to six. He was summoned to surrender, but refused, unless terms were granted him, which was refused, and the marines attacked the "Fort." Many shots were fired on both sides, and finally a battering ram was improvised, consisting of a ladder, and an entrance affected, and all inside were captured. In the meantime several militia companies had also assembled. Under guard of a detachment of the marines the prisoners were transferred from Harper's Ferry for trial by the Circuit Court at Charlestown, over which Judge Richard Parker presided. Brown's avowed object was to free the slaves—peaceably if he could, but forcibly if he must—and after his arrest he asserted that if the people had let him alone, and permitted their negroes to be taken away from them without resistance, there would have been no bloodshed; but that the latter was provoked by the owners not permitting this, and hence killing ensued. In contemplation of an easy accomplishment of his project, Brown had prepared and printed a form of government which he was to set up, and of which he was to be the chief.

The Governor of Virginia at the time was Hon. Henry A. Wise, who immediately repaired to the scene of murder. By many he was urged to assemble a drumhead court-martial and administer summary and well-deserved justice; but he would not consent to this, preferring to leave the matter to the civil courts as being superior to military rule. All the safeguards and protection of a fair trial were to be accorded the prisoners; and to show to the present generation of readers that Dr. Von Holst's conclusions are erroneous is partly the object

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of this article; the other object is to duly inform the generation that has come on the stage since the terrible events we have 3 briefly sketched that there lived in that time a good, great, but unambitious man—a lawyer in every sense of the word, and therefore a good man, for no man can be a thorough and conscientious lawyer without being a good man. This man was Andrew Hunter, of Charlestown, who was designated by Governor Wise to conduct the prosecution.

As is customary in all communities, when a crime is alleged, the accused is brought before an examining court, whose duty it is to hear evidence, and if a *prima facie* case is made out and a felony charged, the prisoner is remanded for investigation by the grand jury. Consequently, on October 25th, 1859, a court consisting of eight magistrates was assembled, and, after hearing evidence, committed Brown and the other prisoners to jail to await the action of the grand jury. On this examination Hon. Charles J. Faulkner, a distinguished citizen and member of Congress, appeared for the accused, with Mr. Lawson Botts, both being assigned by the court.

Hon. Richard Parker presided as judge of the Circuit Court, and, considering the condition of public feeling at the time and the degree of apprehension pervading all classes, his charge to the grand jury is a masterpiece of calmness and moderation. He admonished them that prejudice and animosities were to find no abiding place in their councils; that they were to inquire and ascertain if crime had been committed, and if so, by whom committed, and so indict. Alluding to Brown and his confederates he said, “As I before said, those men are now in the hands of justice. They are to have a fair and impartial trial. We owe it to the cause of justice as well as to our own characters that such a trial should be afforded them.”

The grand jury returned an indictment containing *four* counts, for:

1. Treason.
2. Insurrection and inciting slaves to insurrection.

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### 3. Murder.

4. Murder, with John Copeland as accessory. This indictment embraced all of Brown's confederates who were captured with him.

On the 27th of October, 1859, the case was moved for trial, the Commonwealth being represented by Messrs. Harding and Hunter, and the defense by Messrs. Botts and Green. An ineffectual effort was made on the part of the defense for delay, and the trial proceeded. Of course a full account of the evidence and argument of counsel cannot be expected in this article. Mr. Harding, the junior counsel for the State, opened on the law and was followed by Mr. Botts, and he by Mr. Hunter, who stated his purpose to avoid at that time anything by way of argument or explanation not immediately connected with the particular issue to be tried, and “to march 4 straight forward to the attainment, so far as may be in our power of the ends of justice, by either convicting or acquitting the prisoners at the bar.” He then calmly and forcibly stated the law of treason against the State—the crime of conspiracy and of inciting insurrection.

The witnesses were then called and the examination commenced—this was the second day—and continued till 7 o'clock in the evening, when the court adjourned. On the third day George H. Hoyt, of Boston, appeared as associate counsel for Brown.\* The testimony was resumed, and continued for the prosecution until late in the afternoon. The defense then called witnesses. During this session of the court Brown addressed the court as follows: “I discover that notwithstanding all the assurances I have received of a fair trial, nothing like a fair trial is to be given me as it would seem,” and he continued in that strain for some time, complaining that his witnesses had not been subpoenaed; but it turned out that he was mistaken for they had been served, and subsequently appeared in court, and such of them as were deemed important were examined. On the 4th day, Hon. Samuel Chilton, then of Washington, D. C., but who had served in Congress from the present Eighth District of Virginia—a lawyer of great power and ability—and Harry Griswold, of

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Cleveland, Ohio, appeared as counsel for the prisoner, and Messrs. Botts and Green withdrew from the case, having been dismissed by Brown the day before. Both made appeals for delay on the ground of recent employment in the case and consequent want of preparation, but the court directed the case to proceed. This was Saturday. The testimony was closed, and the case opened to the jury by Mr. Harding for the prosecution. When he concluded, the court adjourned to Monday following at 9 A. M. Upon assembling, pursuant to adjournment, Mr. Griswold opened for the defense and made as able an argument as almost any one could have made under the circumstances, and never once complained of the fairness of the trial. He argued that treason against the State of Virginia could not be committed by Brown, because Brown was not a citizen or resident. His arguments on the other points was such as is usual in criminal cases of a desperate character, and dwelt upon the doctrine of reasonable doubt. In Brown's confession, or statement of his object in coming into the State with armed men and committing violence, he said that he had received aid and comfort and had the sympathy of a large number of people in the North. This Mr.

\* Hon. D. W. Voorhees states that George Semat, from Boston, accompanied him as like counsel.

5 Griswold flatly and unqualifiedly denied and as a Northern man repudiated. Mr. Chilton followed Mr. Griswold and made a very forcible argument, mostly on the law points raised by Mr. Griswold, particularly on the law of treason.

Then Mr. Hunter closed for the State in a calm, clear, forcible, and unanswerable argument on the law and the facts—an application of the facts to the law such as would have done credit to any advocate in any age. He made no appeal to passion or prejudice. In his speech during the third day of the trial, on the motion to postpone, he had said: “I do not rise for the purpose of protracting the argument, or interposing the slightest impediment in the way of a fair trial. This is fair \* \* and so far as I am concerned, I have studiously avoided suggesting anything to the court which would in the slightest degree interfere with it.” And this sentiment pervaded his whole conduct of the case. Among those

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with whom he lived, who cherish his memory and mourn his loss as people mourn for a great and good man taken from amongst them, no further evidence of his fairness in all things, particularly in a matter involving the life of a human being, need be given, but there are people in the United States, unfortunately too many of them, who have fallen into the same error that Dr. Von Holst has, and it is to convince them, if possible, of their great mistake that we have given so much time to this point. And we are not done with witnesses. It will be remembered that Hon. D. W. Voorhees, now United States Senator from Indiana, then one of the rising young men of the times, and whose eminence and eloquence have fulfilled the promises of early manhood, appeared for one of the prisoners. John E. Cook, and made such a plea for mercy as is rarely heard in a court of justice. In a letter to Miss Florence Hunter, of date January 7, 1889, Mr. Voorhees says: "The court itself was a model of judicial decorum, dignity and fairness. If justly represented by the pen of the historian, it would pass into history as the most temperate and conservative judicial tribunal ever convened, when all the surrounding circumstances are considered." \* \* \*

"Throughout all this great historic scene your father was a grand, consulting, concurring, and to a great extent, a guiding spirit. He prosecuted, it is true, the picket line, as it were, of the war that was coming on between the sections, but he did it in the spirit of the Christian gentleman, without a single tone of malevolence or of exasperated resentment." After the war was over Mr. Hunter and Mr. Voorhees met in Washington, and of that meeting the latter says: "He had suffered severely by the war; his house had been burned and his home desolated by his kinsman," (Major-General 6 David Hunter, United States Army), "and yet his temper in talking of these things was the sweetest and most charitable I have ever known. He not only found no fault, had no censure, but even found excuses and suggested reasons for conduct which to my eyes was simply brutal. Such was your father as I knew him and as he appeared to me. I saw him a few times afterward and he always appeared the same—a gentleman of commanding intellect, broad and generous sympathy, and lofty and chivalrous instincts."

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No further evidence of the purity of character, eminence and fairness as a lawyer, of Andrew Hunter need be produced. But as regards the fairness of Brown's trial, there is still another witness, whose statement, while not under oath, was made under circumstances of solemnity that far exceeded those surrounding the ordinary witness. As is well-known, Brown was convicted. At this result probably no one was less surprised than himself. On the 6th day of the trial he was called to the bar and asked if he had anything to say why sentence should not be pronounced upon him. In a clear and distinct voice he said he had, and denied everything except an intention to free slaves; he intended to have made a clean thing of that matter, as he had done the winter before in Missouri; he designed to do the same thing here on a larger scale; he never intended to commit murder or treason, and thought it unjust that he should suffer such a penalty. He attempted a justification of his efforts, and continuing, said: "Let me say one word further. *I feel entirely satisfied with the treatment I have received on my trial.* Considering all the circumstances, it has been more generous than I expected." This is the statement of the person most interested in the trial and its result, notwithstanding he had on two or three occasions during the trial found fault with the ruling of the judge, but never with the conduct of counsel for the prosecution. When the final scene in the courthouse was about to be enacted; standing in the shadow of the gallows, as it were; cut loose from the world; a dead man in all except that he still retained breath and speech, and with that breath and speech, which he knew must soon cease, he declared: "I feel entirely satisfied with the treatment I have received on my trial." The testimony of this last and most important witness is commended to the fairness of Dr. Von Holst.

It is not intended in this article to discuss the character or the motives of John Brown. This is left to future historians. He was, if not a lunatic, a dangerous and determined fanatic, who proposed to override the laws of his country, and achieve by unlawful methods his cherished ideas. He announced on his trial that his sole object was the freedom of the slaves. Years before his untimely crusade, some of the ablest of Southern statesmen had formulated plans for the emancipation of slavery, which, but for the mischievous and

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unlawful interference of such fanatics as Brown, might have been accomplished in peace and under the forms of law. That he was honest in his motives, misguided as were his acts, it is not in our province to discuss. He has been, however, sent down to posterity as a saint and a martyr from certain sources, and is extolled in song and story. The cause for which he owned he yielded up his life, the abolition of slavery, became triumphant after the bloodiest war recorded in the annals of the world. It has been honestly accepted by the people most affected by it, and by the civilized world, as a proper solution of the question, but the means by which it was brought about may still be a subject of doubt. Regarding the matter of John Brown's thorough devotion to the abolition of slavery, outside of personal interests, it is proper to state that Hon. Eli Thayer, in letters to the Boston *Herald* and New York *Sun*, shows conclusively that Brown committed with his own hands six deliberate murders. Thayer says: "In Kansas he (Brown) dragged from their beds at midnight three men and two boys and hacked them in pieces with two edge cleavers in such a way that the massacre was reported to be the work of Indians." He says further, that Brown traveled under false names, claiming at one time, in Virginia, to be a geologist. In several places he professed to be a Dr. McLain, a specialist in hernia, and examined all the negroes whose masters would permit him to do so. In a Presbyterian family he would be a Presbyterian minister, while in a Baptist family he would be a Baptist minister, and so on. He was a chameleon in religion, and could change to suit the spot he found himself on. And to show that Brown's professions for the negro were strongly intermingled with personal greed, Mr. Thayer says: "In Missouri he stole about \$4,000 worth of oxen, mules, wagons, harness, and such valuable and portable property as he could find." Such is the estimate of John Brown from the pen of a man who would have no inclination or inducement to do his memory an injustice.

The presiding judge in this historic trial was the Hon. Richard Parker, of Winchester, Virginia, now in his seventy-eighth year. His great grandfather was Judge Richard Parker, who presided in one of the eastern circuits of Virginia, and died in 1813 at the advanced age of eighty-four. The first Judge Richard Parker had five sons in the Revolutionary army.

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William Parker, grandfather of the present Judge Parker, was a farmer, and he makes the only break in the line of judges in four generations.

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Judge Parker served one term in Congress in 1848. The jailer having Brown in charge proposed to bring him into court under a guard of soldiers; Judge Parker replied that he would not permit armed men in any court of justice over which he presided, and directed the jailer to select four or five men of courage and repute who would see that not a hair of his head was touched.

In conclusion, we append the following extract from the speech made by Hon. D. W. Voorhees in defense of Cooke, one of the parties who was connected and executed with John Brown:

“The mission on which I have visited your State is to me and to those who are with me one full of the bitterness and poison of calamity and grief. The high, the sacred, the holy duty of private friendship for a family fondly beloved by all who have ever witnessed their illustrations of the purest social virtues, commands, and alone commands my presence here. And while they are overwhelmed by the terrible blow which has fallen upon them through the action of the misguided young man at the bar, yet I speak their sentiments as well as my own, when I say that one gratification, pure and unalloyed, has been afforded us since our melancholy arrival in your midst. It has been to witness the progress of this court from day to day, surrounded by all that is calculated to bias the minds of men, but pursuing with calmness, with dignity and impartiality the true course of the law and the even pathway of justice. I would not be true to the dictates of my own heart and judgment did I not bear voluntary and emphatic witness to the wisdom and patient kindness of his Honor on the bench; the manly and generous spirit which has characterized the counsel for the prosecution; the true, devoted and highly professional manner of the local counsel here for the defense; the scrupulous truthfulness of the witnesses who have testified, and the decorum and justness of the jurors, who have acted their part from the first hour

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of this court to the present time. I speak in the hearing of the country. An important and memorable page in history is being written. Let it not be omitted that Virginia has thrown around a band of deluded men, who invaded her soil with treason and murder, all the safeguards of her constitution and laws, and placed them in her courts upon an equality with her own citizens. I know of what I speak, and my love of truth and sense of right forbid me to be silent on this point.”

*Washington, D. C., February, 1889.*