Lessons on the Law

The Birth of a Nation, Nat Turner, and Slave Trials: A Teaching Moment for Social Studies Teachers

H. Robert Baker

It is a general truth about historical movies that they tell us more about the times in which they are made than the eras they are about. It is also true that teachers of history tend to confine their critiques of historical movies to their inevitable historical inaccuracies. It would be easy to critique the 2016 film The Birth of a Nation in this way, but ultimately pointless. Nate Parker—the writer, director, producer, and star of The Birth of a Nation—aims to return a measure of human dignity to Nat Turner, the slave who was famously tried and convicted in 1831 of leading a slave rebellion that resulted in the deaths of 55 people in Southampton County, Virginia. Turner’s rebellion was one of the largest to take place in the southern United States, became a national story, and remains a topic covered in most history books of the time period. Parker’s history, however, is more of an exploration of the deep and troubling psychic connection between nationhood and violence than it is about history at all.

Nonetheless, historical movies have leaks through which real history can sometimes trickle out. One such leak in The Birth of a Nation is the importance of law to slavery. Perhaps inadvertently, the movie draws attention to three ways in which public law was necessary for the exercise of slaveholders’ private power: the slave patrol, extralegal violence, and slave trials. For teachers, these themes in the film are an opening to study and discuss slavery in a pedagogically mature way. What is more, students can now directly access the primary sources about the Nat Turner rebellion, and subsequent trial, at a remarkable website created under the direction of Susan N. Roth of Widener University at www.natturnerproject.org. The Birth of a Nation can, in short, become a point of departure for an important teaching moment.

The Slave Patrol

Every Hollywood film needs a villain. The Birth of a Nation has slave patrol captain Raymond Cobb, played to chilling perfection by Jackie Earle Haley (Haley has a number of Hollywood “bad guy” roles to his credit—Freddy Krueger in Nightmare on Elm Street, Rick Mattox in Robocop, and Alexander Stephens, the vice president of the Confederacy, in Stephen Spielberg’s Lincoln). In the
film, Nat Turner’s three encounters with Cobb are decisive. In the first, Cobb catches Nat’s father out at night without a pass and decides to execute him, right then and there, for the crime. Nat’s father resists and, in good Hollywood fashion, turns Cobb’s gun on one of the patrolmen and wounds another before fleeing. Young Nat watches from the woods, and his father scoops him up and takes him back to his cabin. There he gives his family the bad news—he has killed a patrolman and he must run away. Cobb then breaks into the cabin against the objections of the slaveholding patriarch to bully the family into revealing the runaway’s whereabouts. They hold fast, and Cobb is foiled. In the second instance, Cobb and his patrol catch Nat’s wife “ten yards from the tree line” and use it as an excuse to assault her. In the third, Cobb is leading a group of raggedy whites resisting Nat and his slave army. In a climactic battle scene, Nat bests Cobb in hand-to-hand combat.

The personal animosity between Nat Turner and Raymond Cobb is typical Hollywood pablum, but the slave patrol was a real (and crucial) part of the ante-bellum Southern legal regime. Patrols were first instituted in the Caribbean, where large slave populations, mostly young men and brutally oppressed, were a persistent threat. The English who settled Virginia and South Carolina borrowed from those societies, establishing both formal and informal means of controlling rebellion-minded slaves. By 1754, Virginia had formalized its slave patrol in several statutes, and its structure would remain in place until the Civil War. Patrollers were appointed by the militia commanders; they had the power to enter slave quarters and “other places” that might have had illegal assemblies of “slaves, servants, or other disorderly persons.” The county courts would pay patrollers in tobacco and the patrol captain was required to submit written reports of the patrol’s activity.

It is not clear whether Nate Parker was even aware that a formal slave patrol existed. In the movie, Nat’s father calls the patrolmen “slave catchers,” but patrollers were neither professional slave catchers, nor even professional policemen. Patrolling was conducted by all able-bodied white males in the South (although the wealthy found ways to avoid this bothersome task) and conceived of as a civic duty much like militia service then or jury duty today. Patrollers received a summons, they appeared before a magistrate and took an oath. They were given official appointments and retained their appointment slip in order to verify their status. It came with real power. Slave patrols could enter on private property and open the doors of any slave cabin at any hour of the night. Patrols had the authority to whip slaves they caught breaking the rules, such as traveling without a pass. They might even beat an enslaved person traveling with a valid pass, and there was precious little that a slave master—let alone a slave—might do in the face of such flagrant abuse of power.

Here was a sticky web of dependence. Slaveholders needed the patrols to police the world outside their plantation, but were quite wary of overbearing patrolmen. Patrollers lorded their authority over enslaved people, but could not risk offending too much the wealthy slaveholders who were often their patrons. And all the while the slaves themselves continued to break the rules, avoid the patrols and appeal to their masters for protection when necessary. There were certainly instances of slaveholders shielding their slaves against vindictive patrollers, but most of the history of patrolling is buried in the unwritten record. We don’t know how many slaves were whipped for courting wives on other plantations, gathering berries after dark, or simply wearing clothes that made them appear better than poor white patrollers. What we know for sure is that Southern states needed these slave patrolmen to police the outside world.
Social Education

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Extralegal Violence

A second area where the film intersects law is in its depiction of extralegal violence. In the film, Nat Turner escaped after an artillery unit decimates his rebel force. While this is more Hollywood fiction (in reality, there had been no sustained fighting like the kind depicted in the movie) it gets one important fact right—Nat Turner’s army merely melted away, back into the countryside and back to the farms and plantations, which meant that the precise makeup of the rebel army was unknown. Every black person thereafter had potentially been a rebel. It was a living manifestation of the fear that girded Southern slave society even during times of peace. In the rebellion’s immediate aftermath, gangs of white folk, some properly organized into militias and others not, roamed the countryside, killing every black person they saw.

Nate Parker’s depiction of the wanton murder of African Americans (both slave and free) following Nat Turner’s defeat is accurate but anachronistic, although usefully so. In reality, white on black violence in the week following Nat Turner’s defeat had been awful. Many blacks were shot dead on sight, whether the militia had any proof of their involvement or not. Others were mutilated and tortured. But rather than dwell on such gruesome details, Nate Parker substituted a scene showing Holliday’s haunting rendition of Abel Meeropol’s brilliant song “Strange Fruit” plays in the background. The juxtaposition of a twentieth-century civil rights anthem and the practice of lynching connects the white response to Nat Turner’s rebellion with the white response to other black claims for rights. It is a transcendent moment in the film because it makes clear that extralegal violence has always been a tool of white supremacy, and it survived the extinguishing of slavery. Sometimes history is not about change, but about continuity.

Slave Trials

There is, in the film, precious little about Nat Turner’s trial. This is unfortunate, as it is through the 1831 trial that we receive most of our information about the revolt itself, and we know from this that Nate Parker’s retelling is not faithful to the historical record, although for reasons which are artistically defensible. Parker did not, for instance, tell the story of Nat’s sale from the Turner family, eventually, to the Travis family. In the film, this allows Parker to carry the relationship of Nat and Samuel Turner from that of boyhood friends to slave and master. The adult Samuel Turner is played with considerable depth by actor Armie Hammer, whose character enters the story with a kind of paternalistic insouciance that subtly shifts to discomfort and then horror as he tours neighboring plantations and witnesses starving slaves, overworked slaves, and sees one man’s teeth knocked out with a hammer so that he might be force fed. But there is no moral awakening for Samuel, who turns to brandy for comfort and begins to abuse those that he held in slavery in ways that are considerably worse.

In Nate Parker’s telling, it is Nat Turner who slays Samuel Turner, the two of them alone, Samuel in his bed, surrounded by empty liquor bottles. The historical record tells us otherwise. Nat Turner’s master in August 1831 was not Samuel Turner, who had sold him years before, but Joseph Travis, “a kind master” by Turner’s own admission. The historical record indicates that Nat did not enter his master’s chamber alone—another man who had joined Nat’s party, Will, came with him. Nat struck his master with the hatchet but could not kill him and, so, Will felled him with an axe. Will then killed Travis’s wife, and the children too.

The real value of contrasting the source records with the film version is not to chastise Nate Parker for faulty history, but rather to reflect on how the historical record was itself constructed. Our main knowledge of the rebellion comes from the trials of the rebels at the Southampton County Court of Oyer and Terminer, specially constituted to try slaves for conspiracy and insurrection. Courts of oyer and terminer traced their roots to England as courts called under extraordinary circumstances to “hear and determine” cases of treason or rebellion. English colonists brought that practice with them, and Virginia’s legislature had provided for courts of oyer and terminer specifically to deal with slave insurrection or other capital crimes.

The court minute books (transcribed at www.natturnerproject.org) will reveal much about the way the court of oyer and terminer was constructed. Cases proceeded because Virginia’s attorney “filed an information against the prisoners.” This meant that there had been no grand jury, no bills of indictment—that venerable element of Anglo-American criminal procedure had been eliminated and the state’s attorney could simply file charges (“informations”) against the defendants. The minute books also have summaries of the witnesses’ testimony, establishing in each case direct evidence of the defendants’ acts. Verdicts are given by a panel of judges—no trial jury was seated to determine the guilt of the accused.

Although the legal protections for the rebels were scant, they were there. Witnesses for the defendants appear in the records, as do payments to defendants’ counsel. These lawyers apparently took their jobs seriously, making what one contemporary called “long and elaborate arguments” on behalf of their clients. They even recorded several successes—not all the people charged were convicted, and the judges recommended in several cases that the sentence of hanging be commuted.

Questions of Law & Legitimacy

As historians and teachers of history, we should ask why such trials were
even necessary. Enslaved people were legally powerless in Virginia. They had no rights. Why bother with the formality of a trial? One answer is that the legal procedure protected slaveholders’ property. This is not just conjecture—the court minute book records the monetary value of the slaves ordered to be hanged.

But another answer is that the law, in order to function as the legitimizing tool for a society predicated on an illegitimate slave system, needed to maintain the appearance and practice of impartiality. Virginia, in 1831, existed within a constitutional republic, and slaveholders defensively described their peculiar institution as one bound by established rules and even justice. There were, in short, multiple audiences for the trials, and a good part of that audience had to be convinced that slavery was not merely the brutal and unchecked exercise of private power. It might surprise people today to know that slaveholders did indeed care what others thought of them.

By now we have strayed far from The Birth of a Nation, which does not treat questions of law or legitimacy at all. But no matter. The film is a window on an important part of our shared past, and if students come to Nat Turner’s rebellion through Nate Parker’s window then good for them. Guided by wise teachers, they might learn a little about the real Nat Turner and the society he sought to pull down.

Notes

H. Robert Baker is an Associate Professor of history at Georgia State University. His research explores the relationship between slavery and American legal and constitutional history. He is the author of The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War (2007) and Prigg v. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution (2012).