

From the Civil War to 9/11: Democracy and the Right to a Fair Trial

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In the United States, our right to a fair trial is protected by the Constitution. The ideal of justice is a critical underpinning of our democracy. However, while the United States is a model of an honorable and just court system most of the time, our constitutional rights are occasionally stretched or broken. The rationale is often national security, but others assert that political shenanigans and moral lapses are the real culprits. One instance when constitutional rights were suspended was the case of Mary Surratt. Surratt was one of eight people accused in the plot to assassinate Abraham Lincoln. Her story is explored in the film *The Conspirator*, released on April 15, 2011, to coincide with the anniversary of Lincoln's death and the 150th anniversary of the Civil War. In this article, I analyze *The Conspirator* through four questions that teachers can apply to any historical film they show.¹

The Case of Mary Surratt

Although Mary Surratt denied any involvement in the assassination of Abraham Lincoln, on June 30, 1865, she was condemned to hang for treason, conspiracy, and plotting murder. Surratt was the only woman standing trial in the plot to kill Lincoln and was the first woman ever executed by the United States government.

Surratt was certainly a Confederate sympathizer, and she owned a boarding house where John Wilkes Booth and others convened for some of the assassination planning.² But was she guilty of participating in the conspiracy, and did she receive a fair trial? Surratt was not convicted by a jury of her peers, nor was she afforded many of the other rights to a fair trial. Instead, she was tried by a nine-member military commission. President Andrew Johnson signed her

death warrant despite a recommendation from the military judges that her sentence be commuted to life in prison.

The Conspirator

The Conspirator is the first film created by The American Film Company, a studio established explicitly to produce films that tell “true” narratives about the American past. In an interview for this article, COO (Chief Operating Officer) Alfred Levitt said that prominent historians play a critical role in making the company's films so that “each production remains true to the history from which it is drawn.”³ Directed by Robert Redford and starring James McAvoy as Frederick Aiken (Surratt's attorney), Kevin Kline as Secretary of War Stanton, and Robin Wright as Mary Surratt, the film's central narrative revolves around Surratt's trial and her interactions with Aiken.

The Conspirator as Hollywood Text

Hollywood is famous for creating “visual texts” that bring the past to life, broaden traditional historical narratives, connect the past and the present, and enrich our understanding of the past. Hollywood is also infamous for creating composite characters, distorting historical time, playing loose with the historical record, and “enhancing” films with fictional elements.⁴

When evaluating a “Hollywood history” film as an historical text there are four particularly relevant and revealing questions that teachers can ask:

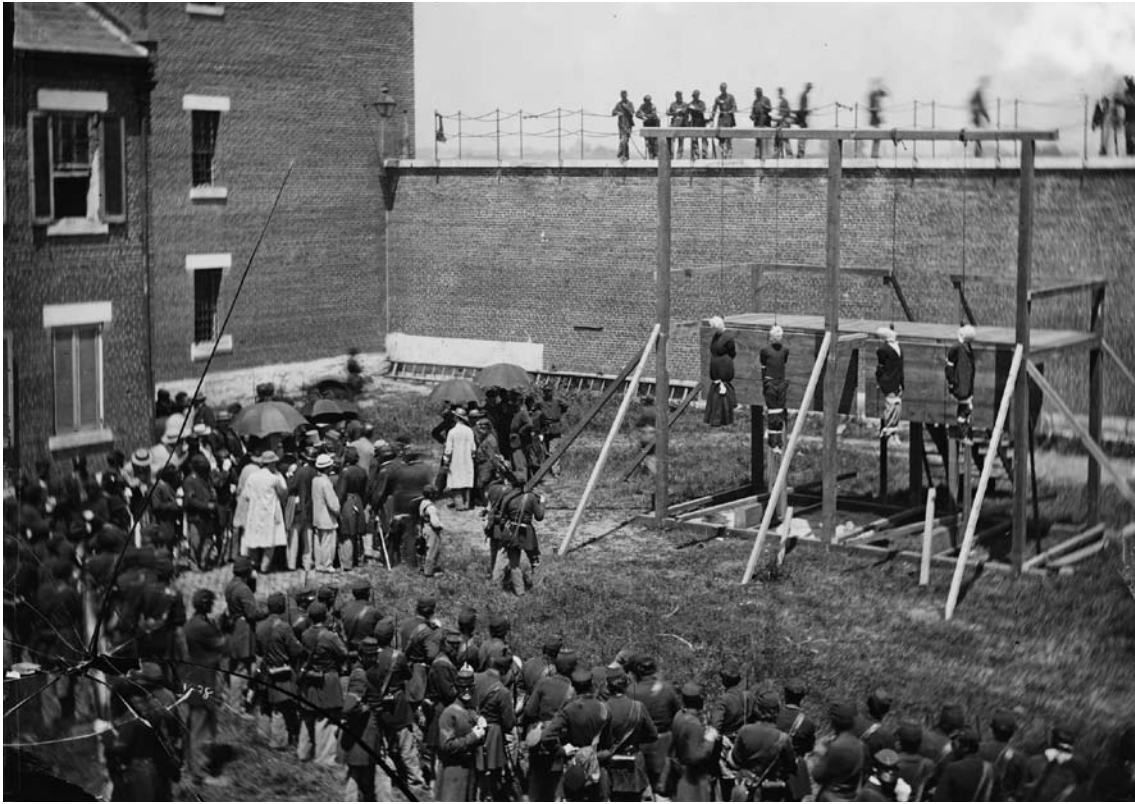
How accurate is the film?

Particularly, where does the film use historical evidence, and where does it stray from the historical record?

What perspectives does the film promote or empathize with? Whose point of view dominates?

How is the film a reflection of the time in which it was created?

What educational opportunities does the film create?



The hanging of Mary Surratt (far left) and three other conspirators, July 7, 1865.

(Courtesy of the Library of Congress, LC-DIG-cwpb-04230)

Here, I answer these questions for *The Conspirator*.

Accuracy

As an historical text *The Conspirator* does better than the average Hollywood film at adhering to the historical record, though it is not devoid of typical Hollywood conventions. Screenwriter James Solomon began work on the script in the early 1990s. In an interview for this article, he explained how he used court transcripts from Surratt's trial, press accounts, and journal entries to recreate the trial and overall historical events. The American Film Company then vetted the script through several historians, including James McPherson. These historians stayed on as consultants throughout filming. While the film's accuracy is enhanced through the use of historical documents and historians, there are gaps in the historical record. COO Levitt explained that the film takes some dramatic license to fill in those gaps because "history doesn't record every single moment, every conversation or thought." Therefore, according to screen-

writer Solomon, he had to do his best to recreate the courtroom audience reaction and conversations that took place outside of the courtroom, particularly between Surratt and Aiken during his visits to her jail cell. And, says Levitt, the film had to honor the way people really spoke during the period while balancing that with language and a style to which modern audiences could relate. However, what Solomon said was his most daunting challenge in terms of historical accuracy was recreating the emotions of characters, how they might feel about or react to a particular event. For emotional accuracy he relied on reading diaries of the time to understand people's feelings and emotions. Finally, the film's creators went to great lengths to accurately portray the historical setting (clothing, buildings, hair style, etc.). For example, to recreate the look of wallpaper for scenes shot indoors, they steamed period style wallpaper with tobacco smoke.

Perspectives and Point of View

There are two aspects of *The Conspirator* related to perspective that merit discus-

sion: the point of view from which the narrative unfolds and the perspectives on Surratt's innocence or guilt. *The Conspirator* is about Mary Surratt, but the narrative is told through the character of her attorney, Frederick Aiken. Aiken was a civil war hero who reluctantly took the case. This point of view helps the audience connect to the film through a good-looking and intelligent war hero who is unsure of Surratt's innocence or guilt. It allows Secretary Stanton to be a clear antagonist and presents the audience with a choice about whether to believe Surratt's innocent plea. I asked Solomon why he chose Aiken's perspective as the narrative device through which to tell the story. Solomon did not offer a complicated rationale, but said he chose Aiken simply because he connected emotionally to the character. When he began writing and researching the screenplay, Solomon was similar in age to Aiken and was dealing with similar issues of personal responsibility and loyalty to family and friends. Solomon is also a former journalist, as was Aiken. Interestingly, Solomon remarked that were he starting

the script today, he would be more likely to tell the story through the point of view of Surratt or perhaps Stanton. Solomon is now older, married, and a father (one of his children is named Lincoln). With his new perspective as a parent and as an older person, he now feels stronger connections with these other two characters.

Solomon commented that another significant tribulation was deciding how the film would portray Surratt's innocence or guilt. What did she know or not know? Solomon asked this question as he searched through historical documents. His approach was to let the film provide a degree of ambiguity so that ultimately the audience must judge for themselves. What Solomon does do is allow Surratt's point of view to be heard through Aiken's character, at least to the degree possible given the available evidence. While the film does not clearly endorse Surratt's innocence or guilt, it does take a stand that Surratt did not receive a fair trial.

Reflection of Today

Years from now, it might seem obvious that *The Conspirator* is a reflection of 2011, particularly the controversial issues surrounding 9/11, and whether accused terrorists should be tried in military or civilian courts. This hypothesis might be reinforced by considering the liberal views of director Robert Redford and the fact that one of the consultants is a military historian who previously was a prosecutor at Guantanamo Bay, Cuba. However, this assumption would be flawed. Solomon began his research and writing long before the 9/11 attacks and even before the first World Trade Center bombings in 1993. Modern day connections between the film and today are more about audience perception than

about the aims of the screenwriter or the original intent of the film.

Educational Opportunities

We know that films can motivate students, develop historical empathy, reflect the time period in which they were created, bring the past alive, and spark dialogue about controversial issues.⁵ *The Conspirator* provides insight into a little known, engaging, and illuminating epi-

Photo courtesy of the American Film Company



Robin Wright as Mary Surratt.

sode that is rarely covered in textbooks or curricular standards. However, the film's ultimate strengths as a teaching tool revolve around two characteristics. First, the film highlights dilemmas inherent in a democracy. In this case, individual rights pitted against national security concerns, particularly the fundamental issue of a right to a fair trial. This was both a historical legal and moral quandary and is reflected in a contemporary context.

Second, the film tells the story of a woman. The past is often focused on the role of men, particularly in film. Few films

highlight the story of a woman or a group of women, especially for the Civil War. Some may argue that this achievement is tempered by the fact that the woman featured is not a clear-cut protagonist; depending on an individual's response to the film, she could be seen as a protagonist or an antagonist. Nevertheless, the film can be used to bring a woman's perspective into the history classroom and, used in conjunction with other sources, to explore issues of women's agency in history. For a set of guiding questions and excellent activities about the right to a fair trial, women in history, and the impact of presidential assassinations, download the film's education guide (see Teacher Resources).

As teachers continue to evaluate the potential of Hollywood history films for use in the classroom, the four questions presented here around accuracy, perspective, reflection of time period, and educational opportunities, can guide their analysis and pedagogical decisions. 🌐

Notes

1. A special thanks to Kimberly Birbrower (from Big Picture Instructional Design), Alfred Levitt (COO of the American Film Company), and Jim Solomon (the screenwriter and researcher for *The Conspirator*) for providing background about the film and for being supportive and enthusiastic.
2. The original plot was to kidnap President Lincoln, not kill him.
3. <http://theamericanfilmcompany.com/about>.
4. Alan S. Marcus, Scott Alan Metzger, Richard J. Paxton, & Jeremy D. Stoddard *Teaching History with Film: Strategies for Secondary Social Studies*. (New York: Routledge, 2010).
5. Ibid.

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Teacher Resources

Official Education Guide for *The Conspirator*, www.conspiratorthemovie.com/images/resources/study_guide_conspirator.pdf

Mary Surratt House Museum, www.surratt.org/

Library of Congress Documents on the Assassination Trials, www.loc.gov/law/help/rare-books/lincoln.php#trials

Women and the Civil War, *Civil War Wives*, Carol Berkin (New York: Alfred Knopf Publishers, 2009).

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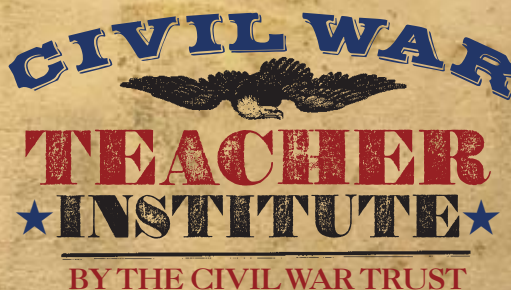
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