

ANITA HILL'S REVENGE: THE JUDGMENT OF CLARENCE THOMAS*

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The blow fell upon Clarence Thomas with unexpected fury. Out of a dimly remembered past, one woman's fury kindled into a consuming fire that branded him. Barring some dramatic recanting or unveiling, Anita Hill has so wedded herself to Justice Thomas that he can never hope to leave the Court for other public service without reliving the nightmare of the last days of his confirmation hearings.

Hill's revenge can only excite wonder as to what inspired it. That question is not answered by the public allegations, which seem a fabric of pirated and invented falsehoods, but perhaps by an animus born of disappointed expectations. That the very eligible Chairman Thomas of the EEOC passed up the very eligible Miss Hill, and for a white woman at that, may well provide all the motivation one needs to unravel this sordid tale.

It seemed that the confirmation hearings when Judge Robert Bork was nominated to the Supreme Court had set an unsurpassable benchmark for bitterness and invective; and then the Thomas hearings occurred. And the last days of the Thomas hearings eclipsed the drama of their first stage, which had already spawned doubts about the proceedings of the Senate Judiciary Committee. Now Americans cannot raise the serious and fundamental questions concerning the overall process without first separating the events of the last days sufficiently to permit a more liberal perspective on the process itself.

A tangled web of motivations and practices—some apparent, some yet obscure—complicates the analysis of this event. Anita Hill in all probability concealed the exact nature of her relationship with and regard for Clarence Thomas. That conclusion, however, does not unveil this mystery, for it is still more probable that she was but a tool in the hands of senators whose motivations are to that extent far more important than her own.

Hill's relationship to those Senators is the real key to this mystery. For if she perjured herself before the Judiciary Committee, one or more of them surely suborned her. Even the insistence on her appearing "involuntarily" serves to underscore their relationship, inasmuch as it protects Hill against being made a scapegoat by implicating them in any wrongdoing by her. The arrangement smells like a mutual guarantee against rattling, since one cannot fall without the other also falling.

We can discern plainly visible connections that give us pause, connections both in terms of motives and in terms of likely scenarios. Even if Hill does have a sufficient animus, it does not explain her emergence at this moment. Her motivations would have to dovetail with the necessities of the opposition to Thomas to form a credible explanation. As it happens, that

opposition confronted two obstacles that seemed all along, and did in the end, prove unsurpassable.

The first was the high degree of support Thomas enjoyed among blacks; a support not shaken by the ideological posturing and interest-group condemnations of the preliminary hearing phase. Without dislodging such support, the votes of many Southern Democrats could not be risked in opposition to Thomas. The second obstacle consisted of senators of conservative bent (and conservative constituencies), whose votes, while not subject to the intimidation of bloc black voting, were based on Thomas's conservatism.

Anita Hill's lurid testimony addressed both of these needs directly. In the first case, the spectacle of a black female of some accomplishment inveighing against putative sexual mistreatment by a black male who had married a white woman speaks all too volubly to deep-seated concerns well chronicled in contemporary literature. The black female sisterhood could well identify with such a spectacle and sympathize with their sister. That would be the wedge to pry open the solid black support for Thomas, perhaps even enabling black women to intimidate black men. In the second case, by focusing the testimony in the most graphic manner on the shopworn stereotype of the oversexed black male on the prowl for white women, the scenario could reawaken fears of conservatives whose conservatism is supposedly only the veneer of lingering racism. Under the force of this double blow, support for Thomas was to wither and die, freeing the Senate to bow to the demands of Left-liberal interest groups.

Although this scenario failed, largely because of Justice Thomas' forceful testimony (some men don't lynch easily!), it is plain from the first stage reactions to the disclosures how nearly it did succeed. In fact, if the vote had been held in the full Senate as originally scheduled, Thomas may well have been defeated. This partisan motive, therefore, seems to have been the principal motive behind these strange events. This, in turn, imposes a great burden on American citizens evaluating the event.

How is it possible that members of the United States Senate, once styled the greatest deliberative body on earth, could have stooped so low in the pursuit of a mere partisan goal? More precisely, what does this event say about the respect those Democrats responsible for the event have for American citizens and the institutions of our national life? The only things barring direct consideration of this question are the vigorous efforts to focus attention on Hill's motivations instead of the senators' motives and the supposed "leak" of the story as an "unplanned" occurrence which forced the Senate's hand.

Hill's motives are not primary. She was but a first violin in the hands of conductors staging this symphony. Further, the leak may not have been so unforeseen as it has been made to appear. Direct evidence comes from the lips of Senator Paul Simon himself. It was he who responded first to news of the leak and vociferously demanded further hearings: Here was new information that the committee must judge before it voted.

The selfsame Senator Simon, however, questioning Hill during the renewed hearings and bending over backwards to express sympathy for her, incautiously revealed that he had

personally interviewed Hill by telephone the day before the committee had voted and closed its preliminary hearings. In short, Simon convicted himself of lying. Not only did he have sufficient knowledge before the committee voted, but he made no attempt whatever to delay or extend the hearings in order to pursue the matter. Conclusion: Simon, probably in conspiracy with others, needed the pretense of a news leak in order to distance himself from the false allegations and thus to obscure the truth that this was a plot from start to finish—"a high- tech lynching."

We may fairly conclude, I believe, that Simon, Metzenbaum, and Kennedy (and possibly Leahy, Heflin, and Kohl) deliberately subjected the nation to the trashiest pornography in pursuit of their partisan agenda. Their attitude conveys the sense that nothing is too base for the American people. That is a disrespect for the people that exceeds anything that occurred in the crumbling Roman empire. I think it also fair to conclude that it proves these senators view the people and their institutions with utter contempt.

The Anita Hill episode suggests that the first hearings on Clarence Thomas' nomination were not in fact deliberation about his fitness to serve but only a charade designed to set the stage for a bawdy comedy. That means, in turn, that many senators from the majority did not participate in the process in good faith. They did not uphold their constitutional oaths. Persons disposed to blame the process and not the senators make a grave mistake. There is no process that could survive and work fairly under the control of people of bad faith.

Exactly a decade ago I reviewed the confirmation process when Justice Sandra Day O'Connor had been nominated to the Court. I said then that "the founders defended the establishment of the Supreme Court and the practice of judicial review as an institution designed to capture for the benefit of free government the wisdom of the learned. They often spoke and wrote of the 'learned professions' as standing apart from the normal social classes and able to arbitrate the divisions of contending factions, Solomon- like. . . Accordingly, we can advise our president to seek for Solomons to appoint to the Court among those learned brethren, steeped in knowledge of the law and claims of a just constitutional order, who have already revealed their judiciousness amidst the trials and temptations which beset our representatives. These are they who, in addition to knowledge of the law, have acquired a knowledge of the people. They know not only the law, but the lawmakers. But give us a Solomon, and *we* will make wise law."

This effectively stated the role of natural law—recognition of the people's authority over the Constitution—in the confirmation process. It also acknowledged the role of partisanship, which is not inconsistent with but rather furthers the ideal. The Court's peculiar role in our government affirms the right of a fair majority to govern itself and others. What partly accounts for the Court's ability to fill this role is the very fact that the justices themselves are brought forward on the shoulders of, and selected by means of, the very partisan process which gives voice to the ruling majority. No lessening of partisanship can improve the judicial selection process.

The ideal for judicial selection benefits from partisanship and in fact remains an ideal realizable under our Constitution as it stands. Nevertheless, to realize this ideal by means of Senate consent, the power to consent should be entrusted to persons of ordinary decency. The process did not fail us in the case of Clarence Thomas; the Democratic senators did.

Clarence Thomas' ordeal may have been sketched as a bawdy comedy by a rat-pack in the Senate. In fact, however, it turned into a true tragedy—not because of its sadness but because Thomas's very virtues made him vulnerable to such skullduggery. No one who heard his complaint that he could not imagine what he “might have done to Anita Hill” to warrant her hatred could miss the force of personal grief in his tone. He believed he deserved better of her; the very way he enunciated her name conveyed the conviction that he had been a friend to her. He had also been scrupulous about discouraging office romances, and thus could not have considered her eligible, however much she may well have been. Thus, living in accord with his principles, he perhaps committed the “infraction” of spurning a woman who would afterward resent it only too deeply.

Similarly, Clarence Thomas, as I have done, has preached too loud and long about the folly of crying “racism” for every mishap that may befall a black person in this society. This very characteristic may have encouraged the conspirators to concoct a racist plot, confident that in defending himself he would challenge everything but their racism. Of course, they misunderstood the principle. We who reprehend casual cries of racism (consider the stupid defense of Marion Berry by Jesse Jackson, Benjamin Hooks, and others) do so precisely to strengthen the force of that claim where it is justified.

These most laudable principles exposed Clarence Thomas to the plot that may well have consigned him to the Court as his last public service. Consider the dimension of the loss. He is a young and able man only forty-three years old. After even twenty years on the Court he will still be only sixty-three—prime age for election to the presidency. It is not unheard that Supreme Court justices have pondered races for the presidency. It is safe to say, however, that the Anita Hill display will make forever unlikely any foray into electoral politics for Clarence Thomas. Thus, the man who might well have become our country's first black president has been effectively forestalled. Anita Hill has her revenge—at her country's cost.

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