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Happy Anniversary, Anita and Clarence!

Bruce Berner

Americans have this October been observing the first anniversary of the Clarence Thomas Senatorial confirmation hearings including, of course, the allegations of sexual harassment by Professor Anita Hill. My tender memories of that scene, rivalled only by the soft reminiscences on my five-year anniversary of root-canal surgery, are now enriched with a year of intervening history and the recent publication of new, intriguing data.

Since the hearings, much has been written about their connection to the rape trials of William Kennedy Smith and Mike Tyson, the defeat of Alan Dixon in Illinois, the difficult fight which Arlen Specter is encountering in Pennsylvania. Interesting as these interconnections are, I am much more impressed by the apparent effect of the hearings on us

common folk. For example, in the first nine months of 1991, prior to the hearings, 4,962 sexual harassment complaints were filed with the EEOC; in the same period this year, 7,465 complaints were filed, an increase of 50.4%. And just this week, these results of a national poll were released: last October, just after the hearings, 24% believed Professor Hill, 47% believed Justice (then Judge) Thomas; now, this October, 44% believe Hill, 34% believe Thomas. What is happening here? Did I miss the release of important new evidence? Is Anita Hill riding Clinton's coattails? Is he riding hers? Beguiling as these political questions are, I have no intention of addressing them. My thesis is: regardless of how one sorts out these socio-political questions, there is another powerful force at work among the American people which can explain part of the puzzle—an instinct toward forgiveness. Before developing this theme, let us briefly revisit last October.

The Thomas-Hill controversy was heightened by the variety of tightly interwoven tensions: men and women; black and white; liberal and conservative; republican and democrat; supervisor and subordinate (in the workplace, but easily generalizable to the schoolplace, the churchplace, anyplace). Although there was already enough for great theater, when POLITICS and SEX were added, we got a blockbuster which held the nation in its grip for

days, even weeks. Weekday soap operas were preempted with hardly a howl from their devotees. (The hearings were, after all, *The Mother of All Soap Operas*.) The large audience share drawn away from the Baseball Playoffs was a bit harder for me to understand since baseball fans tend to prefer lighthearted events with a simple, clear set of rules and customs. (As a teacher of Evidence, I am often questioned by students as to why the judicial system has to have "so many picky rules." I used to reply by asking them to imagine the process without rules. Now I just tell them to run the videotapes of the Thomas hearings.)

While there was much controversy, there was widespread agreement on some points: the whole matter was unfortunate; it was unseemly; it probed all the dark sides of human nature. The only good which was identified was the incident's power to teach us "lessons." As I argue below, I think the greatest "good" in the Thomas-Hill hearings is to be found in the audience, in the American people. Those who were supposed to "learn lessons" are doing some teaching.

This whole controversy was about SIN. ("Sin" is, however, not a term often used in a modern, civilized, secular culture. Nor is it a legal term: the law calls sins "crimes" or "violations" or "torts" or "causes of action".) Senator Grasley from Iowa (refreshingly, a non-lawyer during a week when *everybody* acted like a

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lawyer) stated: "I can't help thinking during this process of that portion of the Bible which says, 'Let him who is without sin cast the first stone.'" At the crass political level, of course, such was aimed at some Democratic Committee Members with notoriously checkered pasts. I'd like to examine it at a deeper level, not because a Senator from Iowa said it, but because Jesus said it: "Let him who is without sin cast the first stone."

Many of Jesus' earthly remarks were about the Kingdom of the Right Hand—the Heavenly Kingdom. They do not, because they were not designed to, tell us much about how to live enmeshed 100% in the Earthly Kingdom. (The last vineyard owner who paid all the workers the same wage regardless of how many hours they worked is now in federal court defending a wage violation under the Federal Fair Labor Standards Act. And "good Samaritans" were sued so relentlessly that most states had to pass special statutes to protect them!) The reason no one could engage Grasley's challenge is because the only way fully to operationalize that biblical passage in the Senate chamber was to adjourn! What, no stones? Boy, that Jesus, what a killjoy!

The law and all of us react to sin in various ways: detect it; disclose it; punish it; suffer from it; and, because legal proceedings have monetary and human costs, sometimes forget it or excuse it. There is yet another way.

Let me introduce one new tension into the Thomas-Hill drama—that between the Left- and Right-hand Kingdoms, the very tension which Grasley references (perhaps inadvertently). Tenets of the Left Hand include: trust nobody, check everything out. That kingdom recognizes as the cardinal sin, "gullibility," being fooled, being taken in. The Right Hand kingdom tells us, among other things: put the best construction on everything. Now when Luther said this he did not mean: "Be a Pollyannish wimp and believe everything. Buy that swampland in Florida." He meant that *after* full investigation, after using our

full analytical powers to understand a problem, when several explanations become plausible, put the best construction on everything. Thus, the Right-hand kingdom recognize "ungraciousness" as the cardinal sin.

There developed both in the Senate and in the general public two intriguing lines of reaction during the hearings. First, there was the tendency to "reconcile" the testimony of Hill and Thomas, to find some explanation which did not entail branding either of them a liar. After all, went the reconcilers, memories fade after such a long time, two people often interpret the same data in different ways, some people are "given to fantasy." The truth is "somewhere in between." The left-hand person in me listened to all this with amusement. "Oh, I see. Two lawyers. One says, 'Research subsection (a) of the latest statute on federal jurisdiction.' The other thinks he said, 'Want to watch *Deep Throat* with me?' Perfectly understandable mix-up, happens all the time." IDIOCY! These explanations won't wash. Either Hill or Thomas was lying through his or her teeth, and it was a horrible lie, and it was authored either by a legal educator or a jurist. It was not a week for lawyers to feel proud. Where was Elliot Richardson now that we needed him again?

Of those willing to concede that there had to be a liar, many seemed perfectly willing to proceed as if neither were. I talked to a few people who believed Hill, yet still favored Thomas' appointment. Did they think that sexual harassment and perjury were not disqualifying? Others who favored Thomas before the allegations and believed his denials indicated that he should not be appointed, "given the environment." Did they think that vicious, untrue allegations should be permitted to disqualify? Many polls showed this extraordinary disjuncture between the public's view of who was lying and its view on confirmation. And now, a year later, we get another clue—probably many more people believed Hill than admitted it then. Why?

It is possible to see in the

disjuncture, in people's unwillingness to admit to a disjuncture, and in the "reconcilers," something quite positive. In addition to those listed above, there is another way to react to sin—it can be forgiven. Would you concede it is just possible that some people were struggling to find a way to articulate that they were willing to extend forgiveness to the sinners in this drama, that there was some grace going on, that a little bit of the Right-hand kingdom might just still be active in this dismal world?

Why then, you may fairly ask, didn't those people just say that they were willing to forgive Judge Thomas? For one thing, grace is not, with rare exceptions, a permissible reaction for legal institutions. While judges, jurors, Senators or others charged with making legal decisions may wish personally to forgive, ordinarily it is not available as a legal solution. Picture our reaction to a judge saying, "Well, Mr. Doe, you have been convicted of armed robbery, but I think you should only be fined \$10 because I'm not a vindictive kind of guy." We readmit criminals to society after they "pay their debt to society." We "forgive" only after such has been earned. The justice system works hard to assure that everyone gets what he deserves whether those deserts be rewards or punishments. That effort cannot be coherently derailed by grace. Gospel is alien in such context. The few examples in which "forgiveness" or "mercy" are legally recognized—pardon, commutation, clemency—are only barely tolerated and usually exercised at grave political risk. Persons, therefore, with official responsibilities who want to forgive conduct must not ordinarily articulate such as the reason for decision.

Secondly, at the purely personal level, articulating a willingness to forgive certain sins these days may be widely viewed as politically incorrect. People are very invested in punishing sins such as lying and sexual harassment. Many people on either side of the Thomas-Hill question will react to forgiveness of the other with honest anger. If you announce to

them that you are willing to extend forgiveness to Thomas or Hill, you are open to the challenge that you are trivializing the offense, have insufficient empathy for its victim, insufficient outrage at its perpetrator. And those challenges are not unfounded. It is imperative that I admit a huge *caveat* to my argument: hypocrites use the vocabulary of forgiveness to mask disdain for the plight of the victims of sin. The net effect is that many people not directly victimized by sin feel uncomfortable in stating that they are willing to forgive the wrongdoings of others. And, in a strict sense, human beings cannot ever claim to "forgive sin" without arrogating to themselves the power of God.

Forgiving, even in the looser, human sense, is not the same as forgetting. Forgiving does not mean to come to believe the sin did not occur, but to act as if it did not. And, of course, that is just what I argue

many people have been trying to do. God does not blot sin from his memory (indeed, it is nonsense to talk of an omniscient personality forgetting anything), he removes its effect, its consequences, its wages through forgiveness.

Neither is forgiveness the same as condonation. If you argue that people cannot be truly forgiven until they acknowledge and repent of their sin, I would agree. Forgiveness to be complete requires this mutuality; condonation does not. However, and this is crucial to my point, the grace of the forgiver, the readiness to forgive if only the sinner co-operates, is no less because the sinner will not accept it. You may, of course, reject a gift, but your doing so does not detract from the goodness of the person who offers it. That any of the actors in this drama will ever come forward and admit wrongdoing and ask public forgiveness is quite unlikely. My point only is that I detect in some of the public reaction

a willingness to extend that forgiveness.

And if you think that I'm totally wrong, that "the nation" or "some people" or "you" are not ready to forgive the sinners in this drama any more than those in the dramas of our everyday lives, you could be right. We're only human. We have agendas. We're all either men or women, black or white, liberal or conservative, republican or democrat, supervisor or subordinate. We can't always forgive. At least, not yet, not today. And some sins seem unforgivable. For the sinners who fear that human forgiveness will not be forthcoming, there is, after all, another place to turn.

But I don't think I'm wholly wrong. I think there is a substantial collective readiness to forgive. In the world there are, to be sure, People of the the World. Yet, amidst roiling modernity, there are, still, People of the Book. □

In the Spirit of James Whitcomb Riley

Whose face is that that burns slow in the night?
It's surely not the moon, my friend, beware!
She might look back and freeze your heart so fast
that blood beats on a moment with no pump,
by habit only. There! That's what she is!
A revenant, in layman's terms 'deceased,'
but doesn't know yet that she's got to stop.
And yet she's just as friendly as she was
last week outside of church when you shook hands
and said she sang real pretty with the choir.
Listen! I think she's just about to moan!

James Clifton Hale