

"RACE-BOUND": HISTORICAL SHACKLES IN THE HILL-THOMAS HEARINGS

Introduction by Theresa Iker

The shadow of Christine Blasey-Ford's testimony in Brett Kavanaugh's confirmation hearings loomed heavily over our seminar in the fall of 2018, leading Matt Bernstein to write his insightful examination of Anita Hill's similar role in Clarence Thomas's 1991 hearings. Attentive from the start to the intersections of racial and gender politics in the Hill and Thomas incident, Matt grappled with the monumental historical task of saying something new about such a recent, media-saturated event. Drawing on the deeper context of the history of lynching, intraracial rape allegations, and longstanding suspicions of "scorned women," Matt performs an attentive close reading of Thomas's remarks and Hill's treatment. In his conclusions about Thomas's "racial transcendence" and Hill's relegation to its opposite, being "race-bound," Matt certainly found something new to say, and he said it incredibly well.

"Race-Bound:" Historical Shackles in the Hill-Thomas Hearings

Matt Bernstein

In 1991, the Anita Hill hearings exploded into the national spotlight and captivated Americans nationwide, who suddenly found themselves caught up in a public trial involving two Black Americans: Anita Hill, then a law professor at Oklahoma State University, and Clarence Thomas, President George H.W. Bush's newest nominee to the Supreme Court. Hill had accused Thomas of sexual harassment. By almost all accounts, the committee dismissed Hill, and treated her with a cold, perfunctory indifference. The hearings at once drew shock and criticism from those who supported Hill and praise from those who supported Thomas. The senators of the judiciary committee ridiculed her, accused her of living in a "fantasy world", and invalidated her at every turn; Thomas, on the other hand, enjoyed comparatively lighter questioning and greater trust. Why did the committee treat Hill in this way and how did Thomas, as someone accused of repeated sexual misconduct in graphic detail, come off as a martyr?

It is easy to attribute the reaction both from the judiciary committee and the public to deep-seated historical biases based solely on the gender of the accused and the accuser. Given larger historical patterns in United States history involving gender relations, it makes sense that the male accused would experience greater leniency than the female accuser. But the race of both parties, specifically the fact that this tense, public hearing centered on two Black Americans, created a complicating wrinkle. More specifically, Thomas's repeated comparison of the trial to a lynching ironically clinched his victory. One might expect that this invocation of lynching, a racially charged word that represents a shameful blot on the American past, could very well backfire on Thomas. It could easily dredge up an image of a hypersexual Black predator and thus affirm his guilt. By closely examining the language and tone of the hearings and providing historical context on the intersections

of race and gender, this paper will argue that Thomas's repeated allusions to lynching ended up working in his favor because his analogy relied on a post-racial interpretation of lynching in the color-blind 1990s political landscape. Hill, on the other hand, could not set the terms of the debate in the hearings due to both her status as a witness and her status as a Black woman. She faced a hostile panel of white male interrogators and, implicitly, a long history of powerful white men's disbelief in Black women's allegations of sexual misconduct and harm.

From the outset of the hearings, Thomas positioned himself as someone who has had the privilege to live in what was essentially a post-racial society until these hearings. He said:

“Mr. Chairman, in my 43 years on this Earth, I have been able, with the help of others and with the help of God, to defy poverty, avoid prison, overcome segregation, bigotry, racism, and obtain one of the finest educations available in this country. But I have not been able to overcome this process. This is worse than any obstacle or anything that I have ever faced. Throughout my life I have been energized by the expectation and the hope that in this country I would be treated fairly in all endeavors.”¹

Thomas's word choice, including “able,” “defy,” “overcome,” “expectation,” all point to the alluring and comforting notion that Thomas had been able to overcome adversity in an America that no longer sees race as it once did. At the same time, by emphasizing his “expectation” of fair treatment, Thomas suggested that the hearing itself was a disgrace because it underscored his precarious status as a Black man facing sexual misconduct charges. To that end, he said, at the conclusion of his opening statement, “I will not provide the rope for my own lynching or for further humiliation.”² At the end of this opening statement, Thomas set up a dark historical reminder of the atrocities that had been committed against Black men from the Reconstruction period, and

1 *Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States, Before the Senate Committee on the Judiciary*, 102nd Cong. 9 (October 11, 1991) (statement of Clarence Thomas), <https://www.loc.gov/law/find/nominations/thomas/hearing-pt4.pdf>.

2 *Ibid.*, 10.

brought critical attention to the optics of the room itself and its role in a larger public theater.

However, the implicit definition of lynching that Thomas used at the end of his opening remarks is one that is radically different than that of the Reconstruction period. Thomas referred to the very process of his confirmation as a lynching, emphasizing how the spectacle of the process has harmed him. He listed every negative effect of the trial on his life, affirming his victimhood throughout: "I am a victim of this process and my name has been harmed, my integrity has been harmed, my character has been harmed, my family has been harmed, my friends have been harmed."³ He continued, "I am proud of my life, proud of what I have done, and what I have accomplished, proud of my family and this process, this process is trying to destroy it all."⁴ When he then said that he would not provide the rope for his own "lynching," Thomas used the word to refer primarily to his victimhood and the injustice he had faced from the process, a definition seemingly unrelated to race. However, an historically accurate definition of "lynching" in the Reconstruction era evoked a very specific racial connotation. It was almost always white women, not Black women, who were the accusers when Black men were charged and lynched on the basis of sexual assault.⁵ By using the word "lynching" while ignoring half of the word's racial connotations—that his accuser was not a white woman—Thomas unconventionally affirmed his victimhood as a Black man, while nevertheless working within a societal framework that had supposedly moved beyond race. Thomas thus successfully played on the concept of an ideal post-racial society while highlighting how this accusation and hearing had upset that very ideal.

This subtle invocation of a "post-racial" America in the 1990s was not new at the time, and it served Thomas an important purpose in establishing his credibility. In a 2007 paper, twentieth-century historian Matthew Lassiter remarks that "Most white Americans want to believe that they now live in a 'color-blind'

3 Ibid, 9.

4 Ibid.

5 Estelle Freedman, *Redefining Rape: Sexual Violence in the Era of Suffrage and Segregation* (Cambridge: Harvard University Press, 2013), 96.

society.”⁶ The 1990s, he argues, saw a wave of discontinuation of race-conscious policies. He writes, “In 1999, a federal judge appointed by Ronald Reagan ordered Charlotte to discontinue the use of race-conscious assignment policies for purposes of integration, described in the ruling as a policy of ‘standing in the schoolhouse door’ in reverse discrimination against white students.”⁷ This kind of political color-blindness mapped onto Thomas as the nominee, as well, even in his personal life. Toni Morrison, award-winning author and contemporary public figure, says, “The nominee could be understood as having realized his yearning for and commitment to ‘race-lessness’ by having a white spouse at his side.”⁸ Morrison refers to this phenomenon as “race transcendence”: Thomas transcended race by ignoring certain racial conventions in his life by marrying a white woman. This same phenomenon emerged in his rhetoric during the hearings, as Thomas ignored important racial connotations surrounding lynching while at the same time bringing his race—and consequently, victimhood—to the foreground.

In spite of Thomas’s post-racial use of the word “lynching,” the word and its history still held significance for Anita Hill, who did not have the privilege of transcending her race. Allegations of sexual misconduct within the Black community have been held to different standards than white sexual misconduct ever since Reconstruction.⁹ A close examination of the historical racial tensions and ideologies deeply embedded in the American conscious explains why the committee treated Hill so coldly. The white Senators in the hearing drew on those stereotypes and a misguided belief in a “race-blind” society to paint Hill as unchaste and immoral. The dismissal and mistrust of Hill’s accusations on the part of a white male jury was a contemporary manifestation of historical disregard

6 Matthew D. Lassiter, “The ‘Color-Blind’ Inversion of Civil Rights History,” *Revue Française D’études Américaines*, no. 113 (2007), 67, <http://www.jstor.org/stable/20875759>.

7 Ibid, 68.

8 Toni Morrison, “Introduction: Friday on the Potomac,” in *Race-ing Justice, En-gendering Power*, ed. Toni Morrison (New York: Random House, 1992), xxi.

9 The history of intraracial sexual misconduct allegations dates back to before Reconstruction, but the Reconstruction period marks a watershed moment when documentation of such allegations and the practice of lynching began in earnest.

for and subjugation of Black women.

Before discussing the mistrust that Hill endured, it is necessary to trace the history of racially-specific sexual violence. Intraracial sexual violence allegations (i.e. one in which a Black woman accuses a Black man of sexual assault or harassment), like the one we see in the Hill hearings, were few and far between when rape accusations involving Black women first emerged. Historian Estelle B. Freedman states that “These accounts remained rare at the end of the [nineteenth] century, for pointing them out could reinforce stereotypes about black rapists.”¹⁰ Freedman argues that lynch law, or the extralegal execution of supposed criminals, was a result of white racial and sexual anxieties surrounding the expanded rights granted to freed Black people. Thus, Freedman concludes, the manufactured association between Black men and rape justified the prevalence of lynch law; and increasing lynchings only served to prove this association—that all Black men are rapists or potential rapists.¹¹ It was this prevailing stereotype that made it difficult for Black women to come out with accusations against Black men, for fear of demonizing their own race, contributing to lynch violence, and unintentionally setting back the cause of civil rights.

But when these allegations did emerge, however rarely, courts almost always held women to a high moral standard. “Like non-elite white women, who found it hard to win rape convictions, these black women had to meet community standards of morality,” argues Freedman.¹² An intraracial rape case was stereotyped twofold: Black men may have been seen as rapists, but Black women were also seen as sexually immoral. This particular stereotype can be traced back to long-held beliefs cultivated by slavery apologists, who asserted that Black women were sexually promiscuous and therefore impossible to truly rape.¹³ Black male assailants benefited not only from Black women’s reluctance to make intraracial accusations, but also from what Freedman coins the “chastity” or “character requirement”: Black women had to be outwardly chaste in her actions to earn both trust and a moral stamp of approval

10 Freedman, 84.

11 Ibid, 97.

12 Ibid, 85.

13 Ibid.

from her community. In the end, in many of these intraracial rape cases in the South during Reconstruction, “Southern appellate courts often overturned guilty verdicts against black men accused of intraracial rape.”¹⁴ As Freedman says, often “the character requirement for victims overrode the racialization of black men as rapists.”¹⁵ The “chastity requirement” signaled an almost insurmountable barrier for women to succeed in intraracial rape cases, and constituted a deeply-entrenched mistrust of black women who accused black men of rape. Even during the racially charged reign of lynch law, when Black men were instantly assumed guilty when accused by white women, longstanding mistrust of Black women’s sexuality meant that their accusations—even against Black men—were met overwhelmingly with disbelief.

This same mistrust and “character requirement” of Black women reemerged in the Hill hearings for Hill herself. The senators’ questions painted Hill as a jealous, lying woman. Senator Heflin, for example, asked Hill if she was a “scorned woman.”¹⁶ Senator Specter questioned Hill’s credibility when he asked, “[H]ow reliable is your testimony in October 1991 on events that occurred 8, 10 years ago, when you are adding new factors, explaining them by saying you have repressed a lot... how sure can you expect this committee to be on the accuracy of your statements?”¹⁷ Senator Leahy asked if Hill has “anything to gain by coming here?” suggesting that she was operating on behalf of someone else, and had an ulterior, ostensibly political, motive.¹⁸ The senators’ questions highlight that, while Thomas had the privilege to transcend race, Hill could not escape the very real implications that persisted from the history of lynching and intraracial rape.

Hill also faced senators questioning her sanity, enduring general gender stereotypes on top of the historical prejudice she faced as a Black woman in an intraracial allegation. After evidence emerged that Hill had passed a polygraph test, Senator Simpson quoted lawyer Larry Thompson, saying, “I understand, based on information from reliable scientific sources... that if a person

14 Freedman, 85.

15 Ibid, 86.

16 *Nomination*, 87 (Senator Howell Heflin, questioning Anita Hill).

17 Ibid, 84 (Senator Arlen Specter, questioning Anita Hill).

18 Ibid, 116 (Senator Patrick Leahy, questioning Anita Hill).

suffers from a delusional disorder he or she may pass a polygraph test.”¹⁹ Simpson here implied that Hill had some kind of mental illness. Julie Berebitsky, author of *Sex and the Office*, notes that senators similarly developed “A more exotic explanation—erotomania—a rare delusional disorder” for Hill’s behavior.²⁰ “In suggesting that Hill had fantasized Thomas’s come-ons,” Berebitsky argues, “Republican senators were merely adopting psychological views that had been around in some form with regard to sexuality in the workplace since at least the 1930s and embracing the distrust of women long codified in rape law.”²¹ Hill thus suffered ongoing gender stereotypes regarding women’s instability in addition to the tradition of chronic mistrust and unattainable character requirements that Black women specifically faced in allegations of sexual harassment and abuse.

Thomas juxtaposed his and Hill’s startlingly different relationships with race when he insinuated that Hill’s accusations came from a place of jealousy. Specifically, at the prompting of Senator Specter, Thomas suggested that Hill had accused him of sexual misconduct because she was jealous of and upset by Thomas’s marriage to a white woman. As Morrison puts it, “Professor Hill, he seemed to be suggesting, harbored reactionary, race-bound opinions about interracial love, which, as everybody knows, can drive a black woman insane and cause her to say wild, incredible things.”²² Though sarcastic, Morrison touches on a key point: Thomas’s suggestion, on which senators harped, compounded the contemporary American commitment to an idealistic color-blind society while simultaneously playing off of racially charged accusations, just as his use of the word “lynching” did.

However, even though he invoked lynching early on in the hearing, Thomas did not have to suffer through any attacks on his character or credibility. Despite—or perhaps because of—the long historical tradition of lynch law painting Black men as hyper-sexualized and predatory, senators consistently assured Thomas of their respect for him. In fact, before Thomas’s opening statement, Sen-

19 *Nomination*, 373 (Senator Alan Simpson, questioning Anita Hill).

20 Julie Berebitsky, *Sex and the Office* (New Haven: Yale University Press, 2012), 266.

21 *Ibid.*

22 Morrison, xxi-xxii.

ator Thurmond said, “Not one of these witnesses, even those most bitterly opposed to this nomination, had one disparaging comment to make about Clarence Thomas’s moral character. On the contrary, witness after witness spoke of the impeccable character, abiding honesty and consummate professionalism which Judge Thomas has shown throughout his career.”²³ Hill would soon face the opposing side of Thurmond’s testament to Thomas’s character, as the senators made “disparaging comments” about Hill, dismantling any semblance of “abiding honesty” and calling into question her “professionalism.”²⁴ As a man, Thomas had control of the narrative throughout the hearing in a number of respects. He gave both the opening and closing statements for the hearing, and even directed what he would allow and what he would not allow in terms of questioning: At the end of his opening statement, following his invocation of lynching, Thomas said, “I am not going to engage in discussions, nor will I submit to roving questions of what goes on in the most intimate parts of my private life or the sanctity of my bedroom. These are the most intimate parts of my privacy, and they will remain just that, private.”²⁵ Through his strong choice of words here, particularly the definitive use of “am” and “will,” Thomas claimed a certain amount of authority over the hearings. In this statement, write Christina S. Beck, Sandra L. Ragan, and Lynda Lee Kaid in *The Lynching of Language*, “Thomas subtly challenges the power that the senators possess to direct the hearings.”²⁶ Indeed, by positioning this statement just after his discomfiting allusion to lynching, Thomas wielded this discomfort to drastically heighten his agency over the hearing and preemptively strip the committee of its ability to ask certain questions. In doing so, just after potentially opening the floodgates for attacks on his character, Thomas immediately prohibited any such attacks, affirming his simultaneous victimhood and moral high ground in the same way he did when refusing to provide the “rope for his lynching.”

It is not just his challenge to the committee’s power that is

23 *Nomination*, 5 (Senator Strom Thurmond).

24 *Ibid.*

25 *Nomination*, 10 (Clarence Thomas).

26 Christina S. Beck, Sandra L. Ragan, and Lynda Lee Kaid, “The Doing of Gender through Cross-Examination,” in *The Lynching of Language* (Urbana: University of Illinois Press, 1996), 36.

crucial to dissecting the results of the hearing, but also the relative power Thomas had in the room compared to Hill. Put simply, Hill very explicitly did not and would not possess the kind of authority throughout the hearings that Thomas expressed at the end of his opening statement. For example, whereas Chairman Joe Biden responded to Thomas by saying “Thank you, Judge. You will not be asked to [submit to those kinds of questions],”²⁷ he later repeatedly asked Professor Hill to repeat, in detail, the lewd comments and actions that she accused Thomas of, and in doing so appeared to make her very uncomfortable. C-SPAN footage of the hearing shows that, when Biden pressed Hill to recite in detail what Thomas said to her, she paused and sighed before continuing. Hill’s reaction indicates her discomfort with the question, and points to how differently the committee treated Thomas and Hill.²⁸

Thomas may have known that his invocation of lynching was not quite historically accurate; but he nevertheless used the word to great effect, wielding the discomfort he evoked to command the hearing while affirming his own victimhood. The claim to the victimhood he faced as a Black man, combined with his subtle reference to the post-racial climate of the 1990s, allowed him to transcend his race and avoid the attacks on his character that the reminder of “lynching” might otherwise have invited. However, the historical shackles of racial and gender stereotypes that weighed on Hill were too heavy for her to overcome. In the end, the combination of Hill’s race and the long history of intraracial allegations made “racial transcendence” impossible for her. She was too “race-bound.”

The hearings provide a fascinating look at how language and history—in particular, warped representations of racial history—can affect how Americans interpret accusations like the ones Hill leveled against Thomas. Could the same case involving two African Americans play out in the same way today? It is hard to say. Certainly, America has a better understanding of sexual harassment and racial and gendered stereotypes than it did during the 1990s. And it is worth noting that, in the wake of movements like

27 *Nomination*, 27 (Chairman Joe Biden).

28 “C-SPAN: Biden questions Anita Hill during Clarence Thomas confirmation hearing,” filmed October 1991, video, <https://www.c-span.org/video/?c4750436/hill-grilled-embarrassing-details>.

#MeToo and Black Lives Matter, Americans are now more aware than ever of how race affects present-day America. But, as seen in the Hill-Thomas hearings, the justice system seems to reward those who can manipulate historical perception in their favor as Thomas did. Still, it is promising that after both the Thomas hearings and the more recent Kavanaugh hearings, both of which dredged up discourse about American history, gender, and race, record numbers of women were elected to Congress (more than 100 after the Kavanaugh hearing), including women of color.²⁹ Perhaps these public spectacles are good for something other than proclaiming victimhood: they galvanize those undercut by the hearings to try to remove those historical shackles themselves.

29 Grace Panetta and Samantha Lee, “This graphic shows how much more diverse the House of Representatives is getting,” *Business Insider*, <https://www.businessinsider.com/changes-in-gender-racial-diversity-between-the-115th-and-116th-house-2018-12>.