

# A Tale of Two Countries

What else is there to say about the Brett Kavanaugh controversy? His testimony has been poured over, analyzed, compared with earlier statements, and subjected to Talmudic (or is it Jesuitical?) exegesis of slang from his high school yearbook.

Last week, Kavanaugh and his chief accuser, Christine Blasey Ford, each testified before the Senate Judiciary Committee. Without any background facts to compare and test what was being said, they each appeared believable in their own way. Ford's testimony was pained and emotional and, if true, painted a very different picture of Kavanaugh than his public reputation and earlier testimony would suggest. This wasn't about an awkward hookup, but rather, in her words, an attempted rape.

He too was emotional and angry, which showed a very different side from his careful and deliberate demeanor during the first phase of his confirmation. A now-angry Kavanaugh was either exhibiting righteous indignation or, in the eyes of his enemies, [narcissistic rage](#) at having his birthright position on the Supreme Court taken away. Thus, observers found the two witnesses equally and oppositely forthright or unbelievable and evasive, depending on prior partisan attachments. In a situation like this, there is little room for middle ground.

As I [observed](#) prior to the Senate Judiciary Committee circus, "While we can never know for sure what happened, we can be sure that the scheduled hearings will bring us no closer to the truth. She will say something terrible happened, and he will deny it." This is exactly what happened.

## **Partisanship and Truth**

Frequently, we find questions, which are technically factual in nature, arousing partisan passion and indignation. Here the

question of what is or is not true instead becomes a shorthand way of signaling one's attachments, loyalties, and humanity. This includes various criminal *cause célèbres* including, before my lifetime, the "[Free Huey](#)" movement and the [Rosenberg](#) spies, and, more recently, the O.J. Simpson and George Zimmerman trials. Such cases, while immediately concerned with the guilt or innocence of the accused, also implicate broader questions, such as prejudice among police and the injustices of the broader society. In short, these cases become a way of asking whether a people and its government are illegitimate or unjust, and by implication, whether one is "woke" in accepting such a broad-based critique.

America is not alone in this phenomenon. France tore itself apart over the [Dreyfus Affair](#), which related to broader questions of Jewish loyalty and identity in post-revolutionary France. Like the Kavanaugh case, it transformed the question of the honor of one man into a debate about France's honor and identity.

Even technical issues like global warming or the [death toll from Hurricane Maria](#) have a partisan angle, though these purely factual questions presumably have answers and are no different from other unsettled questions in science and epidemiology. Nonetheless, when it comes to these identity-defining questions of fact, everyone has a passionate position, even one's carefree "beach friends."

I suspect nothing in the hearings significantly moved the dial or persuaded the other side. Both Kavanaugh and Ford testified "credibly," which is not the same as definitively or convincingly. We have arrived where we started, a "he said, she said" dispute from 36 years ago, in which the dates, addresses, corroborating witnesses, and other indicia of guilt or innocence are lost to the sands of time, contradictory, or simply absent.

The hearings, though, with the intense questioning by the various senators, the grandstanding speeches, the tears and accusations, scarred lives competing with scarred reputations, and endless media analysis, are a symptom of a country that was already deeply divided on questions of government, identity, and culture. Rather than bringing the country closer to the truth, the hearings have only served to amplify partisan views on both sides. Partisans on both sides are now emboldened, enraged, and eager to settle their scores at the ballot box in November.

### **The Senate Hearings Are Another Expression of the Anti-Trump "Resistance"**

As an expression of deeper divisions, the last-minute attacks on Kavanaugh are part of broader pattern. Trump has been viewed as a threat to all that is good and decent by nearly all Democrats, as well as a goodly swath of insider Republicans, from the beginning. His Democratic opponents thought Obama was ushering in a new era and that Hillary's inevitable victory would solidify the gains. His populist rhetoric, agnosticism on free trade, opposition to open borders, and skepticism of foreign alliances are all decisive departures from the *status quo ante*. His election spawned the self-proclaimed [resistance](#), which has rejected his legitimacy from the start and sought either indictment or impeachment.

Even before the Ford bombshell, the Senate process, with [Cory Booker's "I am Spartacus"](#) nonsense, has reminded us of the acrimony of confirmation battles past. Robert Bork's America, we were told in 1987, would revive an era of segregated lunch counters and back alley abortions. Clarence Thomas faced attacks similar to those launched at Kavanaugh, when Anita Hill testified that he harassed her by making uncouth remarks. We were told in hysterical tones that if David Souter, a milquetoast moderate, was confirmed, women would die.

In other words, while Trump supposedly ushered in a unique era of incivility, extreme rhetoric and hardball politics have

been customary regarding Supreme Court nominees, particularly to oppose Republican nominees. For the Democratic Party's left wing, any change from the Court's leftward tilt is painted as a horror show and a major injustice. This, even though elections are supposed to signal the will of the people, and every Republican presidential candidate has made reformation of the Court a centerpiece of their campaigns.

As President Obama once said, "Elections have consequences."

### **A Broader Decadence Among the Elected Branches**

In addition to being an extreme manifestation of the Democratic Left's sense of entitlement regarding the Supreme Court, the latest twists and turns of the Kavanaugh saga also expose a more ominous trend in American politics. There has been a degradation of the quality, self-respect, and ability of our elected officials. The president's power has been chipped away by administrative agencies, passive aggressive noncompliance by the permanent bureaucracy, and the consensus positions of law enforcement and intelligence agencies. This, broadly speaking, is what is meant by the "deep state."

Deference to the deep state goes beyond the executive; the legislature, with its penchant for delegating hard decisions to administrative agencies, also apparently is willing to outsource its investigative function to the FBI. Lame duck Senator Jeff Flake (R-Ariz.) ultimately backed down on his support of Kavanaugh and conditioned his support on an additional FBI investigation into Ford's allegations, which is already underway. Senator Dick Durbin (D-Ill.) asked Kavanaugh to agree to such additional investigations, and Kavanaugh reminded the senator that the FBI does not reach ultimate conclusions, and that the Senate itself had a constitutional duty to investigate and decide on his nomination. Joe Biden, incidentally, [made a similar point forcefully](#) during the Clarence Thomas hearings.

The elevation of the unelected FBI by the Democrats is

a [surprising development](#). They were wary of the FBI when J. Edgar Hoover was at the helm investigating various domestic subversive activities, including the anti-Vietnam-War-movement. During the George W. Bush Administration, the FBI's sweeping new authority following the 9/11 attacks led to frequently expressed concerns about overreach and encroachments upon [civil liberties](#).

Starting around the time the FBI exonerated Hillary Clinton, used her campaign's dossier to investigate the Trump campaign, and, especially after Trump's surprising win, the Democrats changed their tune. The FBI was then transformed into the Guardians of the Republic. We are now supposed to forget its senior leaders, including the disgraced James Comey, abused their authority and probably broke the law to destroy Trump, have [defied numerous congressional subpoenas](#), and generally behaved as an agency that had a "higher loyalty" only to [its own institutional power](#).

In spite of its recent history, we now are supposed to believe that the FBI will, in a nonpartisan way, get to the bottom of this incident from 36 years ago. The premise is laughable.

Elected officials' making decisions have a weighty responsibility with consequences. It takes courage, it takes wisdom, and it takes a sense of stewardship. These are, needless to say, not typically the qualities associated with U.S. senators in 2018, as evidenced, not least, by their attempts to obtain cover from the FBI. The FBI, like the Senate, is not a crew of magicians. They can no more unravel this charge than the Senate; in criminal courts, we have burdens of proof and the like to address such situations. In the Senate, we're supposed to find such considerations embodied in the senators' common sense. Instead, we see gleeful credulousness and Machiavellian maneuvers by the Senate Democrats, all in the service of keeping the Supreme Court as the protector of abortion and other evils.

In writing about France's Dreyfus Affair, Adam Gopnik noted, "The urge to protect the nation from its enemies by going around the corner to get them is natural, but what you get is usually not the enemies, and, going around the corner, you bump into something worse. Breaking the law to defend the nation ends up breaking the nation. Sometimes long stories have short morals." *Plus ça change, plus c'est la même chose.*

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