



Krasno Analysis 2018

A POISONED CHALICE?

The Kavanaugh Affair and U.S. Politics

Priscilla Roberts

Two things happened on October 2, 2018. The *International New York Times* announced that finally, an art historian had identified the woman who was the model (I dare not say sat) for Gustave Courbet's erotic painting, "The Origin of the World." Commissioned by a wealthy Turkish diplomat in 1866 and once owned by the French psychoanalyst Jacques Lacan, it is now a stunning and perhaps disturbing centerpiece in one of the galleries of the Musée d'Orsay in Paris. We are told that the woman who posed for this iconic portrait - it is either the first or second best-selling postcard in the Musée d'Orsay's collections - was Constance Quéniaux, a talented professional dancer and courtesan of humble origins who was the *chère amie* of, among others, Khalil Bey, the Paris-based Ottoman functionary on whose instructions this artwork was painted. At the time, she was 34 years old, and unfashionably thin for a mid-Victorian *femme fatale*. Mme. Quéniaux died in 1908 at the age of 75, a wealthy and respected woman living on one of the best streets in Paris, known for her generous support of philanthropies and much loved by her servants.

Simultaneously, in Washington, DC, the Republicans on the US Senate's Judiciary Committee - all middle-aged to elderly white men - posted online uncorroborated statements by alleged former boyfriends of two women who had come forward claiming gross sexual misconduct in the past on the part of Judge Brett Kavanaugh, a nominee for the United States Supreme Court. The conservative *Federalist* online magazine, published by the Federalist Society, which seeks to vet, groom and push likeminded candidates for the US judiciary, did likewise. With no corroboration, these two purportedly dignified and respectable organizations issued embarrassing material of precisely the kind one expects to find in the pages of the *National Enquirer* and other supermarket

tabloids. By doing so, they implicitly sent the message that the testimony of even the most discreditable and suspect man is worth more than that of any woman.

The Republicans and the *Federalist* did so in an effort to defend Kavanaugh against accusations of alcohol-fueled sexual misbehavior that three women had by that time brought against him, and that threatened to derail his confirmation to the Supreme Court. Kavanaugh's appointment was particularly consequential, because he is likely to tilt the Court into an even more decidedly conservative direction. Contentious issues may soon come before the Court, including perhaps not just whether women should be allowed continued access to abortions, but also whether a wide range of environmental and economic regulations should be left in place, and whether tighter controls should be imposed upon guns.

Investigative attempts

After strenuous efforts, one of the three, Christine Blasey Ford, who had the advantage of being a professional woman from an elite school in the Washington area, was able to obtain an ostensibly respectful hearing before the Senate Judiciary Committee. The Committee bore the responsibility of deciding whether to forward Judge Kavanaugh's nomination to the entire Senate. The would-be Supreme Court judge then made an emotional defense of his position to the committee, while skating over numerous issues relating to his alleged history of youthful alcohol abuse and violence while under the influence.

When one maverick Republican on the committee decided that as things stood, he could not in all conscience vote for the nominee, a somewhat restricted FBI investigation was initiated. The FBI was instructed to interview Deborah Ramirez, a second "accuser" from Kavanaugh's Yale College days, who alleged that at a drunken party at Yale University he had thrust his penis in her face. The media soon reported that the FBI failed to follow up on leads provided by this accuser, and were apparently told not to interview either the first accuser or Judge Kavanaugh himself. Meanwhile, additional evidence as to his alcohol abuse and boorish behavior continued to surface, much of it provided by Yale university classmates.

The FBI was also apparently ordered not to interview Julie Swetnick, a third and less well-connected female accuser, who made somewhat sensational allegations that she attended parties at which the youthful Kavanaugh and at least one friend was complicit in the drugging and raping of young women. She also claimed that at one of these parties, she herself was drugged and raped by a group of men who may or may not have included Kavanaugh and one of his close friends. She was the only accuser who claimed - rightly or wrongly we do not know, unless the Maryland police can unearth the documents - that she filed a police report at the time, and who says that she confided in her now deceased mother. The other two said that they concealed their humiliation from their families.

The counter-attack

Slut-shaming rapidly began. In a rather extraordinary spectacle, scorned men began to crawl out of the woodwork. As in Muslim courts, their testimony as to the character of ex-girlfriends were seen as more reliable than that of the women themselves. Julie Swetnick, the third accuser, was the subject of testimony from not one but two former boyfriends/admirers. One apparent former boyfriend - with a decidedly checkered financial history, not to mention shifting his identity between various aliases - claimed that she threatened his soon-to-be-wife and unborn child. Republican Senate Majority Leader Mitch McConnell promptly posted these claims on his official website, together with sketchy accounts of other legal disputes in which Swetnick had been involved.

A second putative former Swetnick boyfriend emerged a few days later. Dennis Ketterer, a former TV weathercaster and real estate agent, who apparently had much of one leg amputated a few years ago, claimed to have had a brief affair with her for two or three weeks in 1993, during which she confided in him that she enjoyed group sex with multiple simultaneous partners. According to his account, they always met privately, and there are no witnesses, photographs, restaurant receipts, or other documents to corroborate his story. Three years later, when making a failed run for Congress, despite the misgivings which had led him to end his "relationship" with her, he said he tried to make contact with her for assistance in his campaign, only to be told by her father (now 95) that she had "psychological problems."

Ketterer's statement included the information that he had been misdiagnosed with bipolar disorder in the 1990s, but reassuringly affirmed: "I am not mentally ill." His former real estate website includes the 2014 review: "Do not waste your time with D. Ketterer of Client First Realty. His lack of integrity, dishonesty and greed really get in the way of finding or renting a home for honest people." Ketterer, married at least three times and now a Mormon, apparently approached leaders in his church with his story, and they, in turn, put him in touch with the office of Senator Orrin Hatch of Utah, a senior Republican on the Senate Judiciary Committee. After obtaining this statement, Hatch spent much of the night tweeting it out to constituents and others. The next day, the Senate Republican Committee and the Federalist featured it as a full-frontal exhibit on their websites. Meanwhile, Ketterer went on conservative radio to publicize the story.

Simultaneously, the statement of an initially unidentified ex-boyfriend raised allegations of dishonesty against Dr. Christine Blasey Ford. It was soon clear that he was Brian Merrick, a Malibu estate agent and passionate surfer who had a relationship with her for between six and eight years during the 1990s. When the story about Ford broke, he rather patronizingly told the *Wall Street Journal* that she was "sweet, cute and with a good attitude." As for the alleged assault by Kavanaugh, he said: "It strikes me as odd it never came up in our relationship. But I would never try to discredit what she says or what she believes."

That, however, was exactly what Brian Merrick did. In a sworn statement dated October 2, 2018, and released by the Senate Judiciary Committee that day, with his name redacted, he claimed that Ford coached one of her best friends on how to take a polygraph test. The friend promptly denied this. Merrick also questioned how genuine Ford's fear of flying and claustrophobia were. As additional distractions, he claimed that they broke up because she was "unfaithful" to him, and alleged that after their split, she ran up \$600 of charges on their joint credit card. Somewhat confusingly, Merrick's affidavit began by stating: "I found her truthful and maintain no animus toward her."

The Senate Judiciary Committee had clearly liaised with Merrick well ahead of time, doubtless explaining why the Arizona prosecutor hired to interrogate Dr. Ford on behalf of the Republicans questioned her about polygraph tests and her fear of flying. Merrick, who has a bachelor's degree in economics from Pepperdine University, where he played volleyball and met Ford, declined to be interviewed by a local newspaper in late September, explaining that Ford's revelations had brought "a difficult time for him and his family." No doubt life became even more difficult once his statement was released and, as the Republicans must have known would happen, the author was promptly outed. Could it be that Mr. Merrick, good-looking, athletic, and a scion of one of Malibu's founding families, is simply not fully on top of things?

He is, however, positively wholesome by comparison with the ex-boyfriends who have spoken out against Swetnick, who seem to have crawled out of the sleazier pages of pulp fiction. Couples break up all the time, and this is not a criminal offense. On the other hand, one often maintains a certain skepticism as to what one partner may have to say about the other. It used to be that the testimony of women scorned (let us think back to the Clarence Thomas case, when Anita Hill was asked if she was "a woman scorned") was discounted. Now, it seems, the testimony of men scorned is privileged. If an "ex-boyfriend" (genuine, false, or even unidentified) pipes up from the undergrowth, we are expected to accept him as a credible authority. Why? I would be inclined to murmur, Hell hath no fury like a man jettisoned. Particularly for good and compelling reasons. Would any Republican Senator buy a used car from either of Swetnick's self-proclaimed ex-boyfriends?

The Senate holds out a helpful hand

Yet the Republicans on the Senate Judiciary Committee are in the right company with these soulmates and have found their appointed level. Over time, it became abundantly clear that even if Brett Kavanaugh were Jack the Ripper, most Republican senators might still have voted to appoint him. With the exception of Professor Alan Dershowitz of Harvard, who appears to believe that Kavanaugh is innocent and that a full-scale enquiry would exonerate him and allow him to sue his accusers, the United States is apparently divided between those who believe that Kavanaugh was guilty and therefore unfit to sit

on the Supreme Court, and those who think him guilty but consider that no barrier to his joining the Court. By even the kindest interpretation, the real verdict on his conduct is at best the Scottish one of Not Proven, reserved for cases where the evidence is inadequate to convict but there are strong suspicions that the defendant was guilty.

One of the more notable aspects of the recent battle was just how quickly support for Kavanaugh dwindled among the elite individuals and institutions that had previously backed and validated his near charmed career. The *American Bar Association*, a retired Supreme Court Justice, 2,400 eminent law professors, and a top Jesuit magazine, and the *National Council of Churches* all publicly came out against his appointment. So, too, did significant numbers of his Yale classmates, who refused to maintain their previous silence on his past exploits. Harvard declared that Kavanaugh would no longer teach a course in its Law School. In what may well be for him the ultimate humiliation, a man who had prided himself on his elite background and connections, is now perceived by many of his peers as a traitor to his class.

It is entirely possible that most of the top-level Republican men involved in these capers also have an assortment of skeletons in their closets. This we more or less understand, and ideally this exercise should not become a fishing expedition into what octogenarians did 60 or more years ago, in their by now rather distant high school and college years. Yet I am sure that someone somewhere is even as I write scrutinizing the high school yearbooks of Chuck Grassley, Orrin Hatch, Mitch McConnell, Lindsey Graham, and others of their colleagues. Mais tu l'as voulu, Georges Dandin.

Several Republican members of the Senate Judiciary Committee would, beyond peradventure of doubt, have been much happier in that benign age when Constance Quéniaux, who apparently never married, provided various services to those who could afford them, and ultimately died cocooned in comfortable respectability and good works. Others may be too dim even to understand the advantages that system provided. But top political figures of the twenty-first century United States should not confuse the mores of an age of licensed hypocrisy and masculine entitlement with those of an era of female expectations. Courbet's painting is magnificent. But it celebrates a self-made career woman who triumphed over the men surrounding her.

Disgrace may still be just around the corner

More immediately, even as the Republicans and Donald Trump celebrate their triumph in installing Mr. Justice Kavanaugh, I am forcibly reminded of how President Richard Nixon won re-election by a landslide in 1972, only to resign in disgrace less than two years later. One of the more fascinating aspects of recent weeks has been the lack of caution with which Kavanaugh and his allies have revealed the existence of potentially compromising documentary material. It was Ed Whelan, president of the conservative Ethics and Public Policy Center, in collaboration with the Republican-affiliated CRC Public Relations firm,

who came up with a theory that a classmate who possibly resembled Kavanaugh might have been responsible for the assault on Ford. In doing so, he had access to Kavanaugh's high-school yearbook, presumably provided by the nominee or one of his allies.

When Whelan's efforts proved counter-productive, Kavanaugh then revealed that since his early teens he had kept detailed calendars documenting his activities and social life, and helpfully provided the Senate Judiciary Committee and the world with the entries for four months of 1982. Journalists and spectators promptly fell on these, focusing especially on a particular party that might have been the one at which Ford remembered being attacked. Before long, Kavanaugh may well face requests for the remaining calendars. The FBI enquiry, however restricted, identified new leads and caused many would-be interviewees not just to try to contact the FBI, but to tell the media when their efforts proved unsuccessful. They also shared with the press much of the information that they had failed to communicate to the FBI. And while the FBI report may be limited in scope, it can only be a matter of time before it is either released or leaked.

Kavanaugh's complete and unredacted high school yearbook is now available online, courtesy of Archive.org. I would cheerfully make a rather large bet that investigative journalists are plugging every piece of the information on everyone into a computer database. Since full addresses are included, these can be matched up with the floor plans (thank you, Zillow) of potential houses where Ford might have been assaulted. Georgetown Prep's entire class of 1983 are now effectively under investigation. Who else, one wonders, attended those allegedly louche youthful parties of the 1980s and may have something to hide? Media efforts are undoubtedly supplemented by those of the rapidly developing community of Kavanaugh buffs, the amateur sleuths who have embarked on a real-life game of Clue to explore just what happened in the past.

Kavanaugh is an ambitious conservative activist who was clearly desperate to join the Supreme Court, whatever the cost. His supporters are currently glorying in their victory in putting him there. For him and his backers, success may yet prove a poisoned chalice.

Dr Priscilla Roberts teaches in the Faculty of Business at the City University of Macau.

Published October 9, 2018

by Krasno Global Affairs & Business Council @ UNC-Chapel Hill

The views expressed are the views of the author; they do not necessarily represent the views of the Krasno Global Affairs & Business Council.