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UNPARALLEL LIVES: JUDGE BENJAMIN HILL IN ATLANTA, ADOLF HITLER IN VIENNA, 1907-1913

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Fate is strange. Sometimes enormously different men who are or will be of great historical interest live contemporaneous lives, wholly unbeknownst to one another. During the period from 1907 until 1913, for example, two such men were living thousands of miles apart, one in Atlanta, Georgia, the other in faraway Vienna, then capital of the doomed Austro-Hungarian Empire. The two men never met, never knew one another, and had nothing in common. One, Benjamin Harvey Hill, Jr. was serving his tenure as the first Chief Judge of the Court of Appeals of Georgia, and the period was perhaps the most memorable stage of his distinguished career of service to his state and to humanity. The other man, Adolf Hitler, was a wretched, bigoted, hate-filled young man who twenty years later would seize power in Germany and embark on a course of dictatorial government, totalitarianism, and military aggression, topped off by government-ordered and government-authorized mass murders unequalled in this century and perhaps ever. Let us examine these two unparallel lives during the seven year period ending the year before the Sarajevo outrage unleashed a world war.

On January 2, 1907 the newly created Court of Appeals of Georgia convened for the first time and elected Benjamin H. Hill, Jr. as its Chief Judge. Hill remained in this office until November 1, 1913, when he resigned to accept another judgeship. In January 1907 Hill was 57 years old, having been born in LaGrange in Troup County on July 1, 1849. In 1866 Hill moved to Athens, where he entered the University of Georgia. While a student he lived in what is now called the Taylor-Grady House on Prince Avenue, which his father had purchased for \$40,000. In 1869 he received both a B. A. and an LL. B. Between then and 1889 Hill held several federal and state offices, some elective, some appointive. From 1889 until 1907 Hill practiced law in Atlanta in partnership with his brother, C. D. Hill. In 1891 Hill published a laudatory biography of his deceased father, a former U. S. Senator from Georgia.

Thus, when he became a member of the Georgia Court of Appeals in 1907 Hill already had a distinguished career behind him. His service on the Court of Appeals was also distinguished. He wrote the first opinion of the Court, in the

case of *Hunter v. Lissner*, 1 Ga. App. 1, 58 S. E. 54 (1907). He joined the Court in expanding individual rights in criminal cases beyond previous Georgia Supreme Court decisions. He authored several opinions for the Court especially noteworthy in the history of liberty, rights, and justice.

The greatest of his opinions, and one of the greatest examples of magniloquence and stirring language in the annals of judicial decisions upholding freedom, is his opinion in *Underwood v. State*, 13 Ga. App. 206, 78 S. E. 1103 (1913). There Chief Judge Hill did two things in incomparably rich and evocative language. First, he delivered the most powerful rebuke in judicial history to the crime control philosophy that tolerates, even depends upon, violations of basic rights to combat crime. Hill wrote:

We hear and read much of the lawlessness of the people. One of the most dangerous manifestations of this evil is the lawlessness of the ministers of the law. This court fully knows and appreciates the delicate and difficult task of those who are charged with the duty of detecting crime and apprehending criminals, and it will uphold them in the most vigilant legal discharge of all their duties, but it utterly repudiates the doctrine that these duties can not be successfully performed without the use of illegal and despotic measures. It is not true that in the effort to detect crime and to punish the criminal, “the end justifies the means.”

Second, in Miltonic language that in grandeur surpasses any apostrophe to freedom ever written in any judicial opinion, Chief Judge Hill wrote of the inestimable and incalculable values of individual rights as follows:

They [i.e., the basic human rights protections guaranteed in the Bill of Rights to persons charged with crime] are the sacred civil jewels which have come down to us from an English ancestry, forced from the unwilling hand of tyranny by the apostles of personal liberty and personal security. They are hallowed by the blood of a thousand struggles, and were stored away for safekeeping in the casket of the Constitution. It is infidelity to forget them; it is sacrilege to disregard them; it is despotic to trample upon them. They are given as a sacred trust into the keeping of the courts, who should with sleepless vigilance guard these priceless gifts of a free government.

In writing the *Underwood* opinion, Chief Judge Hill was attacking two criminal procedure abuses of his time. First, he was criticizing third-degree type police interrogation practices, then prevalent. Second, he was criticizing the notorious violations of the due process rights of the hapless Leo Frank, whose shamefully unfair murder trial was coming to a close when the *Underwood* opinion was handed down. *Underwood* was decided on August 15, 1913; Leo Frank was found guilty by the jury on August 25, 1913. (For more on the *Underwood* case, see Wilkes, *Underwood v. State: Georgia's Highwater Mark in the Protection of the Basic Rights of Criminal Suspects*, The Georgia Defender, p. 2 (July 1983).)

After his resignation from the Court of Appeals on November 1, 1913, Hill became a Judge of the Superior Court of Fulton County in Atlanta. He remained in office for nearly six years. In 1918 he was defeated for reelection by a margin of 22 votes. He lost because of the operation of two powerful groups, one of whom thought Hill was too lenient on criminals, the other of whom thought Hill was too harsh on criminals. In 1920 Hill was elected to the Georgia Court of Appeals; he served as an Associate Judge there until his death from heart disease in Atlanta on July 19, 1922.

Judge Hill was a warm, family man with many friends. He appears to have been revered by all. He suffered defeats and setbacks in his lifetime, of course. But his public and private service and his sublime prose in defense of liberty lift him to the happy immortality of the great protectors of justice and rights. The University of Georgia and the State of Georgia have every right to be proud of their son, Judge Benjamin H. Hill, Jr. (The official Memorial to Judge Hill may be found at 29 Ga. App. 801 (1923).)

On the other hand, ever reasonable person with a conscience is horrified by the cruel and bloody life of that psychopath, Adolf Hitler. In 1922, when Judge Hill died, Hitler was just another obscure right-wing Bavarian politician. During the time Hill was Chief Judge of the Court of Appeals, Hitler was a total obscurity, living a more or less down and out life in Vienna. Until recently, little was known about Hitler's sojourn in Vienna. The matter was treated as a chapter or section in a Hitler biography. Since the 1950's, however, significant new information has appeared. The most significant development yet was the publication in 1983 of J. Sydney Jones's Hitler in Vienna, 1907-1913. This book is more than a masterful account of Hitler's wanderings and doings and rantings in Vienna; it is a complete study of Viennese culture, art, music, and society during those crucial pre-World War I years.

Hitler arrived in Vienna in late September 1907, at the age of 18; he left permanently for Munich on May 24, 1913 aged 24.

In Vienna Hitler lived sometimes as an impoverished would-be student; but most of the time he was not a student but simply one of the homeless mass of dislocated urban poor, occasionally sleeping on benches in parks, inadequately clothed, staying in homes for the poor, eating at soup kitchens, carrying travelers's baggage for tips. He displayed unremitting hostility to almost everything except power and domination and hatred and prejudice. He read and agreed with virulent anti-Semitic and racist pamphlets. He espoused the crudest forms of Social Darwinism. He flew into rages. He orated incessantly. He was lazy and spiteful. He developed no normal relationships with men or women. He had no true friends. He could brook no disagreement with his loathsome attitudes. That is, he himself was (to quote Judge Hill) a "most dangerous manifestation of ... evil." In short, the foundations were there, once he achieved governmental power, for the Holocaust, tyranny, and another world war. However, the term that perhaps best describes Hitler during his Vienna period (as well as during the rest of his evil, miserable life) is psychopathia sexualis.

In ancient times there was not one but three Fates. The Fate who spun the thread of life was Clotho; her symbol was the spindle. Fate did some strange spinning from 1907 to 1913. In the United States, in Georgia, a distinguished jurist at the apogee of his distinguished career nobly and eloquently advanced the cause of freedom. At the same time, across the ocean, in the grinding poverty of Viennese flophouses, a lonely, psychopathic hater was beginning a career devoted to crushing human rights and inflicting death and torture—a career devoted to trampling upon liberty and justice. Why? Why did Fate arrange that these two entirely different men should occupy some of the same points in time (from 1889, when Hitler was born, until 1922, when Hill died), and that both should share the years 1907 to 1913 as a particularly important stage of their vastly different lives?

Fate is definitely strange.