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THE TRIAL OF QUEEN CAROLINE AND THE IMPEACHMENT OF PRESIDENT CLINTON: LAW AS A WEAPON FOR POLITICAL REFORM

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The age of revolution had just passed, the fires of war cooled, and the age of despotism or empire slowly ebbed to its demise. The giants of liberal democratic thinking were in their grey years and the voices of the greatest advocates ever to argue before the English bar had retired to quieter old age. The world was enlightened and into this atmosphere came the turbulent force of a Bill of Pains and Penalties—Englishmen were once again afire with a bygone age’s ambitions of unrestrained liberty. All that stood in the way was a portly King and his conservative ministers. Thus began the trial of Queen Caroline in the House of Lords.

A few hundred years later in the former upstart colony, now the world’s sole superpower, industry flourished and technology expanded at the speed of the microprocessor. The worries of Soviet invasion and the spread of Communism were becoming pale memories, while the American nation saw a young man who hailed from an impoverished Arkansas homestead assume the highest elected office in the most powerful nation in the world. Once before, America had a youthful visage in the presidency who captivated a nation and led the country into an era of unprecedented legal reforms. Unfortunately, this self-avowed second Kennedy, after winning an unexpected second term, became embroiled in

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a constitutional crisis only fully realized once before in the nation's history immediately following the American Civil War.

This work addresses the trial of Queen Caroline in the English House of Lords in 1820, and the impeachment in 1998 and trial in 1999 of President Clinton. Description of these two historical events provides a backdrop to discover how legal procedures, available only at the highest levels of government, are utilized as political weapons. The use of such procedures to instigate political change requires examination to discover why politicians elect to manipulate legal rules to effectuate this change. After uncovering why legal procedures are deliberately used as weapons to achieve political results, this article analyzes whether the law as a political weapon is an effective method to achieve political transformation.

I. THE TRIALS OF QUEEN CAROLINE & PRESIDENT CLINTON

A. *Caroline, HRH Princess of Wales & Queen Consort of the United Kingdom*

The “whole story of Queen Caroline and her relations with her faithless and perjured husband is one of the most miserable in [English] history.”¹ With this ominous introduction comes a discussion of the events that so captivated a nation as to bring England to the brink of revolution. The following account of the trial of Queen Caroline is truncated to focus upon the political motivations for the initiation and continuance of the proceedings because others have more aptly and at greater length presented the historical account of this trial.² The purpose of recounting the salient circumstances of the trial is to set the stage to evaluate the legal procedures utilized and to compare this event with that of the impeachment trial of President Clinton.

1. *The Prelude*

George, Prince of Wales and the future monarch of the British Empire, disliked his bride Caroline of Brunswick even at the moment of their

1. 2 G. BARNETT SMITH, HISTORY OF THE ENGLISH PARLIAMENT TOGETHER WITH AN ACCOUNT OF THE PARLIAMENTS OF SCOTLAND AND IRELAND 426 (London, Ward, Lock, Bowden & Co. 1892).

2. See generally 2 G. LATHOM BROWNE, NARRATIVES OF STATE TRIALS IN THE NINETEENTH CENTURY: FIRST PERIOD, FROM THE UNION WITH IRELAND TO THE DEATH OF GEORGE THE FOURTH (2d ed. 1882); JANE ROBINS, THE TRIAL OF QUEEN CAROLINE: THE SCANDALOUS AFFAIR THAT NEARLY ENDED A MONARCHY (2006); LORD RUSSELL OF LIVERPOOL, CAROLINE, THE UNHAPPY QUEEN (1962).

wedding in 1795.³ In exchange for the marriage, Parliament was to pay the “enormous debts” of this royal heir, but such payment was slow to occur, prompting the Prince to publicly insist upon Parliament’s promise.⁴ The Prime Minister denied any such promise was made to the Prince and forced upon the future monarch the payment of his debts from the income derived from land and other property previously bestowed upon the Prince through hereditary rights.⁵

In 1796, one month after the birth of their only child, Prince George formally informed his wife by public letter that “intercourse between herself and the prince was in the future to be of a most restrictive nature . . . and a separation as to all conjugal relations” was to occur forever.⁶ The separation sparked both widespread public and regal disapproval by King George III.⁷ The Prince and Princess, although physically separated, maintained a professional relationship between each other, which permitted the Princess to visit the royal palace as a “public personage.”⁸ Yet, this placid tacit understanding shattered in 1806 when Prince George instituted a commission headed by the Lord Chancellor of England to ascertain whether rumors of the Princess’s infidelity were based on fact.⁹ This “delicate investigation” acquitted the Princess of any infidelity in 1807.¹⁰ During this time, “the public . . . warmly espoused her cause, for they were touched by her wrongs and disgusted with the conduct and character of her royal consort.”¹¹

Once the Prince severely restricted the Princess’s access to her child, Princess Charlotte, in 1813, a letter ostensibly from the Princess to the Prince was widely disseminated decrying the inhospitable manner of her exclusion from her child’s life.¹² George responded by leaking the depositions taken during the “delicate investigation” describing Caroline’s alleged lurid sexual liaisons.¹³

3. BROWNE, *supra* note 2, at 345.

4. *Id.* at 345–46.

5. *Id.*

6. THOMAS HARRAL, HENRY THE EIGHTH AND GEORGE THE FOURTH; OR THE CASE FAIRLY STATED 109–10 (2d ed. 1820).

7. ROBINS, *supra* note 2, at 22–25.

8. HARRAL, *supra* note 6, at 112.

9. *Id.* at 112–13. The charges included allegations that the Princess gave birth to a child as a result of an adulterous affair. *Id.* at 114.

10. SMITH, *supra* note 1, at 426.

11. *Id.*

12. HARRAL, *supra* note 6, at 136. Largely public sentiment favored Caroline because her letters to the Prince of Wales, after being returned unopened, were published in the national newspapers. ROBINS, *supra* note 2, at 41.

13. ROBINS, *supra* note 2, at 42.

From this point on, the strained relations between Princess and Prince became a “party question” and begat the utilization of public commissions and references of private matters between the couple to the mediation or determination by commissions or Parliament.¹⁴ These public machinations “long gratified the malice of faction, fed the vulgar appetite for slander, and disturbed the repose of the country.”¹⁵ The fraction between the future King and Queen of England aroused newspapers to declare themselves either for or against either personage; a steady stream of addresses from public bodies supporting Caroline appeared all over the country, as did Caroline’s politically charged responses written by opposition politicians.¹⁶

The climax of tensions between the Princess and Prince occurred upon the proposition of marriage between Caroline and George’s daughter Princess Charlotte to the Prince of Orange. Princess Charlotte refused the match arranged by her father on reliance of her mother’s advice.¹⁷ This caused her father, Prince George, considerable anger and resulted in a short-lived quarrel between father and daughter.¹⁸ As a result of the intra-family conflict, Parliament publicly debated, for a brief time, the Prince’s treatment of his daughter and the estrangement caused by the Prince’s actions.¹⁹ Reconciliation being effected between father and daughter, Princess Caroline sought and received leave from her husband and his ministers to leave England.²⁰ What followed was the effective banishment of the Queen, at the time the Princess of Wales, from England. As she sojourned throughout Europe she was treated as neither nobility nor royalty. Her absence “surprised, astonished, and chagrined beyond description” the opposition party in England.²¹

George, after years of politically aligning with the opposition party, the Whigs, abandoned them upon his ascension to the British throne in favor of retaining the former Tory administration of his father, which caused the Whigs to harbor venomous ill-will against the new King for his failure to establish them in power.²² Despite this regal affront, the Whigs were

14. HARRAL, *supra* note 6, at 136–37.

15. *Id.* at 143.

16. ROBINS, *supra* note 2, at 43–44.

17. HARRAL, *supra* note 6, at 153.

18. *Id.* at 154.

19. *Id.*

20. *Id.* at 155.

21. *Id.*

22. ROBINS, *supra* note 2, at 35; Philip Harling, *Parliament, the State, and “Old Corruption”*: Conceptualizing Reform, c. 1790–1832, in *RETHINKING THE AGE OF REFORM: BRITAIN 1780–1850*

gaining popularity and seeking to overthrow the established Tory government. Largely, this was due to the Tory reaction following the Peterloo massacre in 1819 where approximately 60,000 citizens gathered for a mass meeting and were dispersed by government troops after eleven citizens were killed and four hundred injured.²³ The radical press feverously published anti-government tracts decrying gross violations of traditional English constitutional rights.²⁴ The Tories perceived that the “threat of unrest leading to active insurrection seemed to reach its peak” with the Peterloo massacre.²⁵

The Tory administration responded to this revolutionary tumult by recalling Parliament to reconstitute itself to pass the “Six Acts” or six laws for the seizure of arms, the suppression of secret military training, the punishment of blasphemous and seditious libels, and an increase of the stamp duty on newspapers.²⁶ The laws imposed oppressive restraints on the British public’s freedoms.²⁷ The acts, “implicitly testifying to the challenge Parliament perceived to be presented by the sheer scale of popular political engagement at the time, . . . accepted and endorsed some aspects of the changing political culture they strove to contain.”²⁸ Largely, the Six Acts were targeted to suppress radical calls for parliamentary reform, prevent mass meetings by radicals, and stifle the perceived overturn of English society occurring through newspapers and pamphlets that sought to undermine religion, morals, and the law.²⁹

A few months after the passage of these acts, a conspiracy to murder the King’s ministers was thwarted and outward calls for revolution failed to raise substantial public support.³⁰ Nevertheless, talk of revolution was widespread in 1819 and 1820 throughout England, and Caroline became

104 (Arthur Burns & Joanna Innes eds., 2003) (noting that the Whigs failed to garner regal favor and were excluded from benefits of King’s political influence).

23. ROSE A. MELIKAN, JOHN SCOTT, LORD ELDON 1751–1838: THE DUTY OF LOYALTY 263–64 (1999).

24. *Id.* at 265; STEVE POOLE, THE POLITICS OF REGICIDE IN ENGLAND, 1760–1850: TROUBLESOME SUBJECTS 154 (2000).

25. MELIKAN, *supra* note 23, at 263.

26. Six Acts, 60 Geo. III, c. 1–2, 4, 6, 8–9 (1819) (Eng.); 1 SIR JOSEPH ARNOULD, MEMOIR OF THAMES, FIRST LORD FORMERLY LORD CHIEF JUSTICE OF ENGLAND 128 (1873); *see generally* David Jenkins, *The Seditious Act of 1798 and the Incorporation of Seditious Libel into First Amendment Jurisprudence*, 45 AM. J. LEGAL HIST. 154, 161–64 (2001) (explaining English law of seditious libel).

27. *Id.*

28. Joanna Innes, *Legislation and Public Participation 1760–1830*, in THE BRITISH AND THEIR LAWS IN THE EIGHTEENTH CENTURY 114 (David Lemmings ed., 2005).

29. MELIKAN, *supra* note 23, at 268–69; Harling, *supra* note 22, at 106.

30. ROBINS, *supra* note 2, at 104–05; POOLE, *supra* note 24, at 155.

the focus of popular opposition to the King and Tory government.³¹ The newspapers in London became “vehicles for propaganda on either side.”³²

2. *The Green Bag and Beginning of the Trial*

Upon the death of King George III and ascension of Prince George to the regality of the United Kingdom, the exiled Caroline sought to assert her rights as Queen Consort of the Realm.³³ The prospect of reunion with his bride proved extremely unpalatable to the new King George IV.³⁴ As a result, the King, through his ministers, sought to purchase the Queen’s continued residence abroad.³⁵ This offer of payment was coarsely refused by the affronted Queen.³⁶

As a result, the Queen returned to English soil and the King sent communications to both houses of Parliament to begin an investigation by secret committees into the sexual chastity of the Queen during her long voyage throughout Europe.³⁷ The King transmitted to Parliament documents contained in a green bag assembled by his agents through an agency called the Milan Commission to impugn the chastity of the Queen.³⁸ The House of Lords considered the King’s message and appointed a Secret Committee to investigate the contents of the green bag.³⁹ The Secret Committee was to act like a grand jury to determine whether charges should be levied against the Queen.⁴⁰

31. STEPHEN WADDAMS, *LAW, POLITICS, AND THE CHURCH OF ENGLAND: THE CAREER OF STEPHEN LUSHINGTON, 1782–1873* 149 (1992). The Whigs entertained the idea of lobbying the King to place them into power upon the condition they secure the King a divorce from the Queen. ARNOULD, *supra* note 17, at 138–39.

32. MELIKAN, *supra* note 23, at 276.

33. BROWNE, *supra* note 2, at 371, 380–81.

34. ROBINS, *supra* note 2, at 95, 100.

35. BROWNE, *supra* note 2, at 380 (offering the sum of 50,000 pounds per year); HARRAL, *supra* note 6, at 164.

36. BROWNE, *supra* note 2, at 381 (asserting the Queen expressed utmost indignation and quoting the Queen as indicating that London was the only place for entertaining such proposals); accord HARRAL, *supra* note 6, at 164.

37. BROWNE, *supra* note 2, at 382; E.A. SMITH, *A QUEEN ON TRIAL: THE AFFAIR OF QUEEN CAROLINE* 44 (1993) (reproducing Lady Charlotte’s June 18, 1820, letter to Miss Berry).

38. *Id.*; HARRAL, *supra* note 6, at 166 (noting the Queen’s arrival occurred on same day the King went to Parliament to give royal assent to certain bills for first time that year).

39. FLORA FRASER, *THE UNRULY QUEEN: THE LIFE OF QUEEN CAROLINE* 381 (1996).

40. *Id.* It was determined impeachment (with trial in the House of Commons) was inappropriate because the acts complained of occurred outside of England and the alleged adultery took place between the Queen and a foreigner—thus high treason could not have been factually committed pursuant to law. *Id.* at 379; HARRAL, *supra* note 6, at 231 (indicating immediately before beginning trial all chief legal personages in England agreed high treason was not legally available).

The House of Commons refused to establish a similar secret committee as a result of the exquisite speeches delivered by the Queen's Attorney General, Henry Brougham, and Solicitor General, Thomas Denman. Hence, the Lords proceeded through parliamentary procedure to consider a Bill for Pains and Penalties levied against the Queen alleging her infidelity to the King with an Italian servant.⁴¹ Such a remedy had not been introduced since the reign of Henry VIII, and proved extremely unpopular with the English populace.⁴² The Tory government made a deliberate choice to proceed by a Bill of Pains and Penalties because: recrimination evidence or testimony about the King's own infidelity "was technically irrelevant;" the government could deny the Queen a list of witnesses against her; and the government was not required to prove "each wrongful act by two witnesses."⁴³ The latter two procedural benefits to the government arose as a result of the "alleged adultery occur[ring] abroad and with a man owing no allegiance to the laws of Great Britain," which legally prevented the Queen from being charged with treason—and receiving greater procedural protections.⁴⁴

The Secret Committee of the Lords referred back to the full House a report which spawned a bill to "deprive her Majesty Caroline Amelia Elizabeth of the Title, Prerogatives, Rights, Privileges, and Pretensions of Queen Consort of this Realm, and to dissolve the marriage between his Majesty and the Queen."⁴⁵ With the bill laid before the upper house of Parliament, the Queen insisted on a public trial, which occurred in the House of Lords for several weeks from August through October 1820.⁴⁶

41. FRASER, *supra* note 39, at 400.

42. *Id.* at 375–412 (describing committee actions and public sentiment as expressed through riots, mobs, and the press). In essence, the Queen was to be tried for adultery in the House of Lords by those who were beholden to the King for their rank and privileges—and some of whom conducted the "delicate investigation". *See id.*

43. MELIKAN, *supra* note 23, at 280–81.

44. *Id.*

45. BROWNE, *supra* note 2, at 462–64 (reproducing the bill).

46. HARRAL, *supra* note 6, at 169, 184 (relating that the Queen's counsel read a message in the House of Commons as secret committees debated asking for public hearings on accusations). The Queen rejected an offer by Parliament to mediate the matter. ARNOULD, *supra* note 17, at 155–56 (describing in Denman's own words the dejected sentiments of the members of Parliament who proposed mediation, the public enthusiasm for the Queen's rejection of the proposal, and the determination of the failed mediators to retaliate against the Queen); 2 SPENCER WALPOLE, A HISTORY OF ENGLAND FROM THE CONCLUSION OF THE GREAT WAR IN 1815 40–43 (1878) (describing an attempted negotiation and indicating that failure of negotiation left the government no other choice but to prosecute the Queen).

3. *Trial in the Lords*

From the perspectives of the King and the radical reformers, the trial of Queen Caroline may be seen as the use of legal procedures by both political factions to accomplish divergent ends.⁴⁷ The King desired extinguishment of a radical heroine and the radicals desired the visage of the Queen to brand their new form of government on the English countryside. The prosecution lasted from August 17 to September 8 and its occurrences were broadcast to the nation through daily newspaper accounts—“the public excitement was unparalleled, and little was heard throughout England but the story of the Queen and her wrongs.”⁴⁸ The defense of the Queen took place over thirty-four days, from October 3 to November 10, with an open debate on the bill in the House of Lords following the conclusion of the trial.⁴⁹ Public sentiment was strongly on the side of the Queen throughout the proceedings.⁵⁰

Before the trial began various Lords moved to, in essence, quash the bill on the basis that the procedures established were too vague or the House’s consideration of the bill was not in the interests of the nation.⁵¹ Each of these motions to immediately cease consideration of the bill failed to gain a majority of support to carry the motions and table the bill.⁵² The Lords sanctioned, in conformance with established lawful procedures, denial of a list of witnesses scheduled to testify against the Queen over the strong objections of some Lords.⁵³

The case against the Queen consisted primarily of Italian citizens whom she had employed in various conditions to attend her on her sojourn throughout Europe.⁵⁴ The Queen herself attended the proceedings infrequently while her lawyers argued her case. The rationale for undertaking the trial was, as the prosecution stated at the conclusion of

47. It should be noted that the Queen and King’s counselors met briefly to negotiate a settlement between the parties, which came to nothing. HARRAL, *supra* note 6, at 176–79 (describing in an unnumbered footnote documents presented before the House of Lords relating to the negotiation); BROWNE, *supra* note 2, at 392 (describing some Lords as irritated at the Queen’s refusal to mediate given a large majority in House of Commons desiring this route); ARNOULD, *supra* note 17, at 153–54 (describing the meeting and its futility).

48. SMITH, *supra* note 1, at 427. See FRASER, *supra* note 39, at 413–44 (describing the trial and public sentiment strongly against the King).

49. HARRAL, *supra* note 6, at 245.

50. LORD FRANK PAKENHAM LONGFORD, A HISTORY OF THE HOUSE OF LORDS 102–06 (1999).

51. HARRAL, *supra* note 6, at 246–47.

52. *Id.*; ROBINS, *supra* note 2, at 171.

53. 2 PARL. DEB., H.L. (2d Series) (1820) 440–45; HARRAL, *supra* note 6, at 200–08.

54. ROBINS, *supra* note 2, at 187 (noting the English cultural distrust of foreigners, especially Italians).

their case, the support of the morals and sustenance of the reputation of the country.⁵⁵ The defense asserted the proceedings were instituted with talk “of the honor and safety of the country, yet its dearest interests, its peace, its morals, and its happiness are to be sacrificed to satisfy [the King’s] desires.”⁵⁶

The first prosecution witness, Theodore Majocchi, caused the greatest sensation because of his flawless recitation of incriminations against the Queen on direct examination and his utter failure to recall anything other than his rehearsed testimony on cross examination.⁵⁷ The result was a deep blow to the prosecution whose moniker became “*non mi ricordo*,” which after some dispute by the learned Lords was translated “I do not remember.”⁵⁸

These events caused a public frenzy as gazetteers and pamphleteers derided the government’s case.⁵⁹ The press heretofore actively restrained by the seditious libel laws enjoyed a new freedom of expression.⁶⁰ The agitation became frenzied, fueled by the popular dislike of the King and the perceived sham of a proceeding unfolding in London against the Queen—many Lords thought it politically dangerous to pass the bill and send it for further debate in the House of Commons.⁶¹

The radicals seized upon the forensic skill of the Queen’s chief counselor, Henry Brougham, in utterly discrediting the government’s chief witness by daily processing formal written addresses from towns and cities across England proclaiming their support for the Queen’s cause.⁶² Indeed, Brougham became “worshipped by the reformers, who looked upon him as the boldest and most potent sustainer of their cause; while the Tories regarded him as the willing subverter of the constitution and the arch betrayer of his country.”⁶³

Against the backdrop of this charged atmosphere, the Lords adjourned on September 9 for three weeks to resume the tribunal on October 3 and

55. HARRAL, *supra* note 6, at 253.

56. BROWNE, *supra* note 2, at 390 (reproducing Henry Brougham’s speech on August 17, 1820, to the Lords arguing against an initial hearing of the bill).

57. ROBINS, *supra* note 2, at 192–99.

58. WALPOLE, *supra* note 46, at 51 vol. 2; BROWNE, *supra* note 2, at 401 n.7 (recounting two interpretations offered by prosecution and defense experts).

59. ROBINS, *supra* note 2, at 199.

60. *Id.* at 235–46; FRASER, *supra* note 39, at 413–44.

61. WADDAMS, *supra* note 31, at 145.

62. WALPOLE, *supra* note 46, vol. 2, at 45 (noting that petitions asking that the Bill be withdrawn were also presented to Parliament from the city of London).

63. BENJAMIN COULSON ROBINSON, *BENCH AND BAR: REMINISCENCES OF ONE OF THE LAST OF AN ANCIENT RACE* 219 (1889).

receive any defense witnesses.⁶⁴ During this long period of repose, the “case against the Queen was permitted to circulate throughout the world and sink deep in every mind . . . without contradiction or comment . . . ; the result was an impression which no negative testimony could have the least chance of removing.”⁶⁵ Hence, the trial became a contest where the government fought for its continued existence and the opposition “gladly took up a cause in which they knew they were supported by the bulk of the people of all classes, not so much from a firm belief in the queen’s innocence as in disgust at the conduct of the King, her real prosecutor.”⁶⁶

The commencement of the Queen’s defense began with the moving oration of Henry Brougham imploring the Lords to “save the Crown, which is in jeopardy, the Aristocracy, which is shaken; [and] . . . the Altar, which must stagger from the shock that rends its kindred throne.”⁶⁷ His statement reveals the extent to which these machinations shook the foundation of English civilization. The monarchy was in a precarious state of continued existence, the nobility in a position of losing their hereditary privileges, and the church (much like its predecessor in Henry VIII’s time) appeared to acquiesce in royal prerogatives to excise a regal wife.⁶⁸

The Queen’s defense began on sound footing but quickly fell into a precarious situation when Lieutenant John Flynn fainted under cross examination.⁶⁹ The imputation was that he had manufactured his testimony to serve the Queen’s interests.⁷⁰ Another Lieutenant, Howman, introduced damaging evidence about the Queen’s dubious chastity, which led to the conclusion that these two Lieutenants “did the queen more harm than all the testimony furnished by the other side.”⁷¹ Brougham began to threaten to introduce evidence of the King’s covert marriage to a Catholic before his marriage to the Queen.⁷² This was no pale threat; if proved, it would have caused the King to immediately forfeit his throne because an act of Parliament forbade any English King to marry a Catholic.⁷³

64. HARRAL, *supra* note 6, at 245.

65. ARNOULD, *supra* note 17, at 170.

66. BROWNE, *supra* note 2, at 422.

67. ARNOULD, *supra* note 17, at 169 n.1 (reproducing Brougham’s speech).

68. Cf. Monroe H. Freedman, *Henry Lord Brougham, Written by Himself*, 19 GEO. J. LEGAL ETHICS 1213, 1216 (2006) (recounting that the military supported the Queen and threatened mutiny against the King and government).

69. ROBINS, *supra* note 2, at 250; WALPOLE, *supra* note 47, at 593.

70. ROBINS, *supra* note 2, at 261.

71. WALPOLE, *supra* note 46, vol. 2, at 54.

72. ROBINS, *supra* note 2, at 263.

73. Act of Settlement, 1701, 12 & 13 Will. 3, c. 2, § 3 (Eng.) (excluding any Roman Catholic from ever ascending to the throne of England); Royal Marriages Act, 1772, 12 Geo. 3, c. 11 (Eng.)

The King's hope to hurriedly dismiss the Queen by public condemnation of her behavior abroad—and thus quell the radical ambitions—proved futile. Instead, the same elements he sought to put down rose in rebellious uproar against the foundations of English constitutional monarchy. These radicals paraded in enormous numbers to the Queen's temporary residence in London to deliver written declarations of their allegiance to her cause and openly denounce the King and his government.⁷⁴

A decisive blow against the prosecution was levied by the defense witness Giuseppe Giaroline, who insinuated that the prosecution had bribed him to alter his testimony.⁷⁵ The testimony supported the inference that the Milan Commission, whose charge was to investigate the Queen while she traveled throughout Europe, engaged in widespread tampering with witnesses to assure favorable testimony against the Queen.⁷⁶ “That as to the bulk of the charges, the queen was the victim of an extended and well-paid conspiracy no one can doubt”⁷⁷

The trial closed among turbulent mobs in the streets of London cheering the Queen, newspapers adhering vehemently to either the government's or Queen's cause in an effort to influence the vote on the bill, and the lawyers inside the House of Lords making bombastic, politically charged speeches. In short, England was on the brink. On the one hand, revolution in the style of the Americans and the French might occur; on the other hand, the English people might preserve the status quo and adhere to traditional English governmental norms.

The Lords retired to consider the bill at the beginning of November and debated its merits for four days.⁷⁸ On the second reading of the bill, a majority of the House were in favor of passing the bill.⁷⁹ Yet, many of the Lords “who firmly believed in [the Queen's] guilt thought the measure inexpedient, and therefore voted against it.”⁸⁰ Some in the government itself were “becoming increasingly lukewarm about the whole business . . . and wanted the bill quietly put out of the way in the Lords without ever

(denying legal recognition of any marriage by one of royal blood unless expressly approved by the monarch).

74. ROBINS, *supra* note 2, at 264.

75. *Id.* at 265–66.

76. *Id.*

77. BROWNE, *supra* note 2, at 420.

78. WALPOLE, *supra* note 46, at 56.

79. *Id.* (noting vote 123 for and 95 against).

80. *Id.*

coming to the Commons.”⁸¹ The King’s desire for divorce ultimately turned against him because the opposition insisted the bill retain the divorce clause to make the bill more objectionable.⁸² The government, “worn out by the interminable meetings of the Lords . . . agreed in cabinet that if the majority on the third reading of the bill dropped to something like ten or twelve,” the Tory Leader and Prime Minister, Lord Liverpool, would withdraw the measure.⁸³ The third reading of the bill won a nine vote majority; Liverpool immediately rose and withdrew the bill.⁸⁴ In the end, a “vast majority of the Lords were undoubtedly clear that the queen was guilty, though only a small majority were willing to assent to the propriety of the proceedings against her.”⁸⁵

Thus concluded the legal proceedings in the English House of Lords described as the trial of Queen Caroline. The next section of this article details the proceedings against William Jefferson Clinton, forty-second president of the United States. In a later section the aftermath or reactions to the trial of Queen Caroline are discussed in detail. Having described the historical event of the trial, analysis of reaction to the trial occurs after consideration of the Clinton impeachment proceedings to allow for a clear comparison.

B. William Jefferson Clinton, Forty-Second President of the United States

As with the description of Queen Caroline’s trial, the following account restricts itself to only the essential events necessary to evaluate whether the legal procedures employed were used as political weapons, as others have more copiously recounted the historical event of the impeachment of President Clinton.⁸⁶ Like the extraordinary Bill of Pains and Penalties levied against Queen Caroline, the impeachment

81. NORMAN GASH, LORD LIVERPOOL: THE LIFE AND POLITICAL CAREER OF ROBERT BANKS JENKINSON SECOND EARL OF LIVERPOOL 1770–1828 164 (1984).

82. *Id.* at 165.

83. *Id.*

84. *Id.*

85. WALPOLE, *supra* note 46, at 56; *Accord* HARRAL, *supra* note 6, at 290–91 (reproducing dissents by Lords to withdraw the bill which stated verbatim that many Lords believed the Queen was guilty and yet voted against the bill).

86. *See, e.g.*, PETER BAKER, THE BREACH: INSIDE THE IMPEACHMENT AND TRIAL OF WILLIAM JEFFERSON CLINTON (2000); RICHARD A. POSNER, AN AFFAIR OF STATE: THE INVESTIGATION, IMPEACHMENT, AND TRIAL OF PRESIDENT CLINTON (1999); DAVID P. SCHIPPERS WITH ALAN P. HENRY, SELLOUT: THE INSIDE STORY OF PRESIDENT CLINTON’S IMPEACHMENT (2000); JEFFREY TOOBIN, A VAST CONSPIRACY: THE REAL STORY OF THE SEX SCANDAL THAT NEARLY BROUGHT DOWN A PRESIDENT (1999).

proceedings initiated against President Clinton were only the second such occurrence in United States history.⁸⁷

Sexual infidelity was the cornerstone of the impeachment proceedings against President Clinton.⁸⁸ Unlike the case against Queen Caroline, President Clinton's wrongdoing actually involved his alleged obstruction of justice and perjury in judicial proceedings.⁸⁹ But sexual indiscretions were the subject matter that formed the basis of the President's impeachable offenses because he lied about having sexual liaisons with a female then-White House staffer.⁹⁰

I. Prelude

The context in which these proceedings took place was the 1992 capture of the majority of seats in the House of Representatives and Senate by the opposition party (the Republicans).⁹¹ This "Republican Revolution" was fueled by Representative Newt Gingrich's reform proposal called the "Contract with America," (Contract) which set out a number of governmental reforms.⁹² The Contract reforms were implemented with staggering speed once the Republicans assumed power. The success of these legislative reforms prompted strong public support for the Republican Party. To the dismay of the Republicans, Republican challenger Robert Dole did not win the ensuing presidential election in 1996.⁹³ Instead, the American people re-elected President Clinton.

87. PETER B. LEVEY, *ENCYCLOPEDIA OF THE CLINTON PRESIDENCY* 194 (2002) (noting that Andrew Johnson in 1868 was the only other American president formally impeached). President Richard Nixon was not formally impeached because the House of Representatives did not vote on Articles of Impeachment transmitted by the House Judiciary Committee. See POSNER, *supra* note 86, at 171.

88. David T. Canon & Kenneth R. Mayer, *Everything You Thought About Impeachment is Wrong*, in *AFTERMATH: THE CLINTON IMPEACHMENT AND THE PRESIDENCY IN THE AGE OF SPECTACLE* 47 (Leonard V. Kaplan & Beverly I. Moran eds., 2001); James Burk, *The Fate of The Republic*, *SOCIETY*, Mar. 1999, at 40.

89. 105 CONG. REC. H11, 774 (daily ed. Dec. 18, 1998).

90. H.R. REP. NO. 105-830, at 33-35 (1998) (explaining the basis for articles of impeachment); George M. Pomer, *Coarse Acts and Common Sense*, *SOCIETY*, MAR. 1999, at 22.

91. JOHN J. JANSSEN, *CONSTITUTIONAL EQUILIBRIA: THE PARTISAN CONTINGENCY OF AMERICAN CONSTITUTIONAL LAW FROM THE JEFFERSONIAN "REVOLUTION" TO THE IMPEACHMENT OF BILL CLINTON* 145 (2000).

92. *Id.*

93. *Id.* at 147.

2. *The Independent Counsel*

Many of the chief Republican lawmakers harbored a vitriolic dislike of President Clinton.⁹⁴ The President had weathered countless scandals during his first term and a number of political failures.⁹⁵ An independent counsel had been investigating President Clinton's dubious conduct since 1994 but had failed to uncover substantial evidence to prosecute.⁹⁶ Legislative deadlock ensued, with a number of actual shutdowns of the federal government—actions which, in retrospect, may have caused the Republicans to lose popular support in the 1996 presidential election.⁹⁷

The case against President Clinton began with the revelation of tape recorded conversations between Linda Tripp and Monica Lewinsky, a former White House intern. In January 1998 Kenneth Starr, Independent Counsel and a former federal judge, obtained the tapes.⁹⁸ As a result of these conversations and the President's subsequent testimony before a federal grand jury, the Independent Counsel issued the "Starr Report" urging the House of Representatives to conduct an impeachment inquiry into discrete areas of presidential misconduct involving sworn testimony given in recent judicial proceedings and recommending several possible grounds for impeachment.⁹⁹

The Starr Report was apathetically received by the American public as evidenced by opinion polling at the time.¹⁰⁰ The tactics utilized by the Independent Counsel were widely condemned, and included:

interrogating Monica Lewinsky for eleven hours while discouraging her from calling her lawyer, putting pressure on her by threatening to prosecute her mother for unrelated offenses, urging her to wear a wire to trap Clinton and [close friend and advisor Vernon] Jordan in a sting operation, threatening witnesses with imprisonment and

94. MICHAEL WALDMAN, POTUS SPEAKS: FINDING THE WORDS THAT DEFINED THE CLINTON PRESIDENCY 245 (2000) (noting Republican congressional leader Tom Delay's hatred of Clinton).

95. The widely publicized scandals were named Filegate, Travelgate, Monicagate, Whitewater, Chinagate, and Koreagate. Michael J. Gerhardt, *The Historical and Constitutional Significance of the Impeachment and Trial of President Clinton*, 28 HOFSTRA L. REV. 349, 363 (1999).

96. LEVEY, *supra* note 87, at 196.

97. JANSSEN, *supra* note 91, at 146.

98. LEVEY, *supra* note 87, at 196.

99. OFFICE OF THE INDEPENDENT COUNSEL, A REFERRAL TO THE UNITED STATES HOUSE OF REPRESENTATIVES FILED IN CONFORMITY WITH THE REQUIREMENTS OF TITLE 28, UNITED STATES CODE, SECTION 595(C), H.R. DOC. NO. 105-310 (2d Sess. 1998) (grounds section). On the role and function of the Independent Counsel relating to impeachment proceedings see Julie R. O'Sullivan, *The Interaction Between Impeachment and the Independent Counsel Statute*, 86 GEO. L.J. 2193 (1998).

100. ROBERT BUSBY, DEFENDING THE AMERICAN PRESIDENCY: CLINTON AND THE LEWINSKY SCANDAL 205 (2001).

financial ruin for very minor transgressions if they failed to come across with cooperative testimony, sending investigators to pore over the sexual habits and reading habits of potential witnesses and targets, [and] leaking damaging information about targets to the press.¹⁰¹

Many Americans believed the Independent Counsel, frustrated at his inability to obtain evidence of the President's wrongdoing, desired any means to attack a man he believed to be evil.¹⁰² Further, most Americans from the outset of the proceedings believed the impeachment of President Clinton to be politically motivated.¹⁰³ Many thought the Independent Counsel was a "zealous partisan out to get President Clinton" who produced an "exceedingly partisan as well as intellectually and analytically dishonest" report.¹⁰⁴ This view may have resulted from the fact that Congress publicly released the Starr Report before beginning an impeachment inquiry.¹⁰⁵

Nonetheless, as a result of the Independent Counsel's report, the House conducted a formal debate on whether to authorize the House Judiciary Committee to inquire into whether the Report and its attendant evidence established grounds for impeachment of the President.¹⁰⁶ As a result of the Republican legislative majority, the House of Representatives voted to authorize its Judiciary Committee to investigate whether impeachable offenses had been committed by the President.¹⁰⁷ The ensuing hearings

101. Robert W. Gordon, *Imprudence and Partisanship: Starr's OIC and the Clinton-Lewinsky Affair*, 68 *FORDHAM L. REV.* 690 (1999); see, e.g., David Nyhan, *A Right-wing Conspiracy? You Be the Judge*, *BOSTON GLOBE*, Feb. 17, 1999, at A15 (detailing feelings about Starr's bias toward Clinton's guilt).

102. Gordon, *supra* note 101, at 703; Wilson Carey McWilliams, *Who Got Impeached?*, 126 *COMMONWEAL* 12, 13 (1999).

103. Ronald Brownstein, *National Perspective; With Impeachment Book Closed, Here's What We've Learned So Far*, *L.A. TIMES*, Feb. 15, 1999, at A5. Interestingly, a poll taken after the impeachment trial in the Senate illustrated more Americans found the President to blame for the proceedings against him than the Republicans. Richard Morin & Claudia Deane, *Public Blames Clinton, Gives Record Support*, *WASH. POST*, Feb. 15, 1999, at A1. Henry Hyde, Chairman of the House Judiciary Committee, stated, "We understood our position was not a popular one. It was a principled one." *Id.*; Tom Squitieri, *Grim but Proud, Prosecutors Head Home Managers Feel that Senators Sabotaged Case*, *U.S.A. TODAY*, Feb. 15, 1999, at 11A.

104. Michael deHaven Newsom, *Independent Counsel? No. Ombudsman? Yes: A Parable of American Ideology and Myth*, 5 *WIDENER L. SYMP. J.* 141, 178 (2000).

105. H.R. REP. NO. 105-830, at 124-25 (1998).

106. S. DOC. NO. 106-3, at 3 (1999) (referring to Rep. Henry Hyde's opening statement concerning establishing an impeachment inquiry authorization). See John Arthos, *Appeal to Proportion in the Clinton Impeachment Trial: Reconciling Judgment with Disposition*, 66 *WEST. J. COMM.* 208, 212 (2002) (describing public and congressional representatives' perception that Independent Counsel was biased and proceedings were zealously partisan).

107. 105 *CONG. REC.* H10, 118 (daily ed. Oct. 8, 1998). The debate on authorizing the Judiciary

before the Judiciary Committee were intensely partisan.¹⁰⁸ After determining a method to institute an impeachment inquiry, the House heard from staff counsel on their interpretations of the evidence submitted by the Independent Counsel, then from a panel of legal experts on what the standards of impeachment consisted of, and finally from witnesses for both sides.¹⁰⁹ Articles of Impeachment against the President were sent to the full House for consideration by the Republican majority on the Judiciary Committee on a straight party-line vote.¹¹⁰

3. *Impeachment in The House*

The entire House of Representatives considered the Articles of Impeachment transmitted by the Judiciary Committee.¹¹¹ The Committee transmitted four Articles of Impeachment to the full House, but only two Articles were approved.¹¹² The first Article impeached the President because he had “willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration . . . [by] willfully provid[ing] perjurious, false and misleading testimony to the [federal] grand jury.”¹¹³ The second Article impeached President Clinton because he violated his constitutional duty

to take care that the laws be faithfully executed, . . . prevented, obstructed, and impeded the administration of justice, and . . . engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up,

Committee was limited to two hours for each party—about one day to decide whether to conduct an impeachment inquiry. 105 CONG. REC. H10, 015 (daily ed. Oct. 8, 1998).

108. Jonathan Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, 49 DUKE L.J. 1, 1 (1999); Susan Low Bloch, *A Report Card on the Impeachment: Judging the Institutions That Judged President Clinton*, 63 LAW & CONTEMP. PROBS. 143, 149 (2000) (asserting that after the Starr Report was received by the Judiciary Committee, impeachment was a forgone conclusion and all subsequent proceedings were partisan).

109. H.R. REP. NO. 105-830, at 127 (1998).

110. *Id.* at 129–35 (votes in favor of impeachment clauses were all twenty-one Republicans in favor and all sixteen Democrats against); Frank O. Bowman, III, *Falling Out of Love With America: The Clinton Impeachment and the Madisonian Constitution*, 60 MD. L. REV. 5, 10 (2001) (noting that Chairman Hyde abandoned consensus building and pushed impeachment articles out of Committee through his majority).

111. 105 CONG. REC. H11, *supra* note 90, at 774.

112. H.R. REP. NO. 105-830, at 128 (1998) (indicating referral of four articles out of the Judicial Committee); 105 CONG. REC. H12, 40-42 (daily ed. Dec. 19, 1998) (Articles I and III passed and Articles II and IV rejected).

113. S. DOC. NO. 106-4, at 18 (1999).

and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him.¹¹⁴

The President was impeached by the majority party, the Republicans, in opposition to preferences of a large majority of Americans.¹¹⁵ The results of the congressional election occurring immediately before the House of Representatives voted to impeach the President illustrate that the American public did not support impeachment of the President.¹¹⁶ The Republicans lost a number of congressional seats, but retained a modest majority in both houses of Congress.¹¹⁷ The “lame-duck” House of Representatives that impeached the President in December 1998 contained a greater majority of Republicans than were elected/re-elected in the November congressional election in 1998.¹¹⁸ With the prediction of a substantial gain in congressional seats by Republican leader and Speaker of the House Newt Gingrich unfulfilled, Gingrich resigned as Speaker of the House three days after the November election.¹¹⁹ With the electoral loss, many believed Republicans would table impeachment.¹²⁰ This view was magnified when Republican Robert Livingston, Speaker of the House-elect, also resigned amidst allegations of his own sexual misconduct.¹²¹ Despite electoral losses in the 1998 midterm congressional elections and damaging public resignations by party members, the House impeached the President.¹²² The Democrats viewed the impeachment as engineered by their Republican opponents, and the American people saw the impeachment broadcast to them as a “partisan ganging-up.”¹²³

114. *Id.*

115. IRWIN L. MORRIS, *VOTES, MONEY, AND THE CLINTON IMPEACHMENT* 8 (2001) (declaring that Republicans voted to impeach on their own and in opposition to preferences of large majority of Americans); BUSBY, *supra* note 100, at 188, 206 (arguing Republicans sought to remove President Clinton against popular will and inconformity with partisan motives); Turley, *supra* note 108, at 98 (asserting the vote to impeach was largely partisan and noting that some Democrats defected to vote for the impeachment articles and some Republicans voted against the articles).

116. LEVEY, *supra* note 87, at 197.

117. *Id.*

118. POSNER, *supra* note 86, at 181–82.

119. CANON & MAYER, *supra* note 88, at 50. Gingrich asserted on election day the Republicans would gain 20 seats in the House. *Id.*

120. *Id.*; MORRIS, *supra* note 115, at 5, 7 (noting Washington insiders surprised that Republicans continued process despite Democrats gaining electoral victories).

121. LEVEY, *supra* note 87, at 197.

122. See Pomper, *supra* note 90, at 24.

123. Adrienne F. Brovero, *Dale Bumper's Ad Hominem Impeachment Trial of President Clinton*, 36 ARGUMENTATION & ADVOC. 218 (2000).

4. *Similarities between Caroline & Clinton*

The trial of President Clinton began with the appointment of Managers by the House to conduct the prosecution of the President in the Senate.¹²⁴ Interestingly, House Manager Representative Henry Hyde (also chairman of the House Judiciary Committee) referred to Thomas More's refusal to swear a false oath in his opening statement in the Senate to begin the trial of the President.¹²⁵ In response to Hyde's quotation to English authority the President's counsel could have referred the Senate to an equally convincing English precedent—that of the trial of Queen Caroline. The reference is particularly fitting because of the parallel between the green bag presented to Parliament containing evidence against the Queen and the Independent Counsel's similar submission of boxes of evidence to the House.¹²⁶ Both proceedings were, in essence, initiated by a third party—the King and the Independent Counsel—who provided all the evidence accusing the individual of misconduct outside of the legislative domain.¹²⁷

Like Queen Caroline, President Clinton denied any illicit sexual affair occurred with Monica Lewinsky.¹²⁸ Unlike Caroline, Clinton's public assertion that no sexual affair took place was retracted after DNA testing revealed the presence of the President's genetic material on Lewinsky's dress.¹²⁹ The judges of each individual believed sexual contact occurred, but only in the case of President Clinton were such sexual relations actually shown.¹³⁰ Keeping these proceedings in mind, the last similarity between these two national events is found in the results of their respective trials.

5. *Trial in the Senate*

The impeachment trial proceeded with presentation of the House's case against the President and the President's counselors presenting a defense.¹³¹ These presentations consisted of speeches made by the House Managers and counsel for the President in the Senate chamber,

124. S. DOC. NO. 106-4, at 19 (1999).

125. *Id.* at 1007.

126. *See supra* notes 38–39.

127. *Id.*

128. LEVEY, *supra* note 87, at 196.

129. NICOL C. RAE & COLTON CAMPBELL, *IMPEACHING CLINTON: PARTISAN STRIFE ON CAPITAL HILL* 3 (2004); Richard M. Pious, *The Paradox of Clinton Winning and The Presidency Losing*, 114 *POL. SCI. Q.* 569, 589 (1999).

130. *Id.*

131. *See supra* note 124, at 1091.

summarizing the evidence related to the two Articles of Impeachment tendered by the House to the Senate.¹³² The Republican House Managers asserted the evidence received by the Independent Counsel supported the two allegations of impeachable offenses, while the President's counsel refuted such claims.¹³³ After the presentations, the Senators were permitted to pose written questions to the House Managers and counsel for the President.¹³⁴ Unlike the Lords in Queen Caroline's trial, the Senators were prevented from interfering or interacting with the Managers and counsel for the President during their evidentiary presentations.¹³⁵ The written questions were presented to the presiding officer, the Chief Justice of the United States Supreme Court, to be read aloud.¹³⁶ Only the party questioned was permitted to answer the question posed.¹³⁷ A party could not respond to a question posed to the other party or offer rebuttal to the answer given by the opposing party.¹³⁸

At the conclusion of the question and answer period, Senator Byrd of West Virginia (a Democrat) brought a motion to dismiss the impeachment inquiry against the president.¹³⁹ The House Managers and President's counsel were permitted to argue the motion, while the Senators debated the motion in closed session.¹⁴⁰ Before voting on the motion to dismiss, the Senate also considered a motion by the House Managers to permit presentation of additional evidence and order additional depositions to be taken from, among others, Monica Lewinsky and the President.¹⁴¹ After a closed session of the Senate, the Senators rejected the motion to dismiss and voted in favor of the motion to allow additional depositions (excluding the President) into evidence.¹⁴²

It should be noted that on January 27, 1997, a short time after the votes on the two motions described above,¹⁴³ Senator Hollings stated

[a] couple of weeks ago the Senate was about to go over the precipice of partisanship . . . Senator BYRD continued to *calm partisan zeal* and give us all a sense of historic perspective. We

132. *Id.* at 1091–1225, 1292–1335.

133. *Id.*

134. *Id.* at 1337–38.

135. *Id.*

136. *Id.* at 1338.

137. *Id.*

138. *Id.* at 1337.

139. *Id.* at 1469.

140. *Id.* at 1469–97.

141. *Id.* at 1531–32; *see also id.* at 1500–78.

142. *Id.* at 1582–83, 1613.

143. *Id.* at 1595.

started talking sense instead of politics. It got us together. *We could have gone the way of the House*, but Senator BYRD is the one who put us on the right path. (emphasis added)¹⁴⁴

The Senator's statement illuminates the central fact that the participants in the impeachment trial felt at the time that the proceedings were politically motivated.¹⁴⁵ Indeed, Senator Byrd's speech delivered to the Senators collected in closed session may be the most revealing description of the impeachment trial:

The White House has sullied itself. The House of Representatives has fallen into the black pit of partisan self-indulgence. The Senate is teetering on the brink of that same black pit. Meanwhile, the American people look in vain for the order and leadership promised to them by the Constitution. Of one thing I am sure: the public trust in all of the institutions of government has severely suffered.¹⁴⁶

Like Henry Brougham's speech to the Lords declaring the destruction of English constitutionalism if a verdict was entered against the Queen, Senator Byrd captured the public mood when he asserted "[o]ur supreme duty is not to any particular person or party, but to the people of the Nation and to the future of this Republic."¹⁴⁷ Like Brougham, Byrd pulled the senators from a precipice—had the senators impeached the President, the damage to the American political system could have been great.¹⁴⁸ Unlike the English in 1820, the Americans were not on the verge of revolution. Yet, popular calls for substantial reform of the federal government, similar to those advocated at the time of the Seventeenth Amendment's enactment, could have resulted.¹⁴⁹ The quelling of partisan rhetoric in the Senate averted such a fate for the American republic, but

144. *Id.*

145. Senator McCain's published statement concerning his vote to impeach the president asserted, "I don't lightly dismiss the public's clear opposition to conviction." *Id.* at 2565. *See also* BUSBY, *supra* note 100, at 206 (asserting public opinion played second fiddle to partisan disposition).

146. S. DOC. NO. 106-4, at 1596 (1999) (Senator's speech printed only in Senate's records and was not delivered directly to the America public on the Senate floor.).

147. *Id.* at 1598; ARNOULD, *supra* note 17.

148. S. DOC. NO. 106-4, at 1598 (1999). As one scholar stated, the impeachment processes was a "[p]eriod in U.S. history during which the engine of conventional politics—constituents and their interests—was forgotten." MORRIS, *supra* note 115, at 12.

149. *See generally* Donald J. Kochan, *State Laws and the Independent Judiciary: An Analysis of the Effects of the Seventeenth Amendment on the Number of Supreme Court Cases Holding State Laws Unconstitutional*, 66 ALB. L.REV. 1023, 1027-32 (2003); Todd J. Zywicki, *Senators and Special Interests: A Public Choice Analysis of the Seventeenth Amendment*, 73 OR. L. REV. 1007 (1994). Compare U.S. CONST. art. I, § 3 with U.S. CONST. amend. XVII.

the sensation of the impeachment trial did have palpable effects upon American political institutions, as will be discussed in later sections.

The trial of the President in the Senate concluded with deposition testimony from the witnesses identified in the Managers' motion described above and hearing closing arguments from the House Managers and counsel for the President. The Senate then retired to closed deliberations to consider the fate of the forty-second President of the United States.¹⁵⁰ After a few days of deliberations, the Senate acquitted the President of the two Articles of Impeachment.¹⁵¹

C. The Reactions to the Trials

1. Caroline's Acquittal

The Bill of Pains and Penalties withdrawn, the King requested that a financial settlement to secure the Queen's departure from the country be provided by the Tory government, notwithstanding public support for the Queen, evidenced by jubilant celebration in the streets and countless congratulatory written declarations published throughout Britain.¹⁵² The Tory government, realizing the hazards in acquiescing to the King's request, asked the King to wait until popular frenzy for the Queen quieted.¹⁵³ Incensed by the government's unwillingness to fulfill his request, the King recessed Parliament.¹⁵⁴ It appeared that Caroline's popularity and predicament was at the point of shattering the ruling party, while "the opposition were joyfully anticipating the collapse of the administration in the new year."¹⁵⁵

The Prime Minister, Lord Liverpool, secretly circulated an offer of 50,000 pounds per year to Caroline, with no recognition of her as Queen or English royalty.¹⁵⁶ The move was desperate with the fate of government

150. S. DOC. NO. 106-4, at 1800–1994 (1999).

151. *Id.* at 2024. As Senator Specter's published statement in closed deliberation asserted, [f]rom the time the Senate reconvened on January 6, 1999, the public pressure to conclude the trial promptly was palpable. The improbability of a two-thirds vote for conviction was only one factor although the totality of the other factors contributed to that improbability. The adverse public reaction was reflected in consistent polling data and the feel on the streets in our various States.

Id. at 2720.

152. GASH, *supra* note 81, at 166; WALPOLE, *supra* note 46, at 599–600.

153. GASH, *supra* note 81, at 166.

154. *Id.*

155. *Id.*

156. *Id.* at 167.

at stake.¹⁵⁷ Conveniently, public opinion in favor of the Queen suddenly collapsed, which “seemed at the time as inexplicable as the sudden frenzy of enthusiasm on her behalf.”¹⁵⁸ Her trial did much to extinguish revolutionary zeal.¹⁵⁹ The proceedings “played an important role in stemming the violent tide of violent insurrectionary rhetoric among frustrated and disillusioned radicals.”¹⁶⁰ A strong factor in the Queen’s fall from popular favor was her acceptance of Liverpool’s 50,000 pound settlement when Parliament reassembled.¹⁶¹ Her acceptance of the settlement caused the Queen to lose her status as “a symbol of resistance to oppression.”¹⁶²

The Whigs attempted to rekindle public sentiments, but failed to convince the populace or fellow members of Parliament that a new government was needed.¹⁶³ The Whigs’ effort was further stymied by members of their party who believed that the “King’s folly had put the Tories in a difficult position . . . but few [W]higs believed that the outburst of feeling for the queen would be lasting, or that it would destroy the ministry.”¹⁶⁴ As a result, the Whigs failed to gain a legislative majority through popular support by the electorate in 1820.¹⁶⁵ Despite the Whig electoral loss and the tempering of radical vigor, the Tory government did manage to change attitudes and repeal a number of their repressive measures enacted before Caroline’s trial.¹⁶⁶

The Queen’s trial had other substantial effects. Due to the increase in the publication of parliamentary debates, the press became a more powerful political force than the King’s political patronage.¹⁶⁷ Indeed, the press arose as the expression of the popular will, which replaced the monarch’s political patronage as the motivating factor in English politics in the years following Caroline’s trial.¹⁶⁸

With the death of Caroline, the cessation of public outcries for radical reforms, and the influx of wealth into England in the later half of the

157. *Id.*

158. *Id.* at 169.

159. WADDAMS, *supra* note 31, at 151.

160. POOLE, *supra* note 24, at 157.

161. SIR LLEWELLYN WOODWARD, *THE AGE OF REFORM 1815–1870* 68 (Sir George Clark ed., Oxford University Press 1962) (1938).

162. *Id.* at 68.

163. GASH, *supra* note 81, at 168.

164. WOODWARD, *supra* note 161, at 69.

165. Harling, *supra* note 22, at 104.

166. WOODWARD, *supra* note 158, at 72.

167. Harling, *supra* note 22, at 107.

168. POOLE, *supra* note 24, at 157.

1820s, the “Whigs’ enthusiasm for parliamentary reform waned.”¹⁶⁹ Yet, the desire for legislative reform amongst the Whigs was diminished but not dead. In 1830, the radical dreams of reform were realized as the Whigs ousted the Tory government and assumed control of parliament.¹⁷⁰ Soon after taking power, the Whig majority enacted the Reform Act of 1832 [hereinafter 1832 Act],¹⁷¹ which transformed the parliamentary electoral system, expanded suffrage, and reformed many perceived parliamentary abuses.¹⁷² “Prior to the Act’s passage in 1832, the right to vote in general elections in the United Kingdom was based largely on property qualifications and extended to only five percent of the adult population.”¹⁷³ The 1832 Act precipitated a century of reform measures, which recognized “the emergence of representative and participatory democracy as the primary principle of constitutional and political theory in Britain.”¹⁷⁴ The seizure of government by the nobility and landed gentry ended with the Reform Act—and the populace finally seized control of the government that railed against its Queen.¹⁷⁵

2. *Clinton’s Acquittal*

During the remaining two years of President Clinton’s administration, enactment of new laws and approval of presidential appointments stagnated.¹⁷⁶ Meanwhile, the President was sanctioned for contempt of court by the judge presiding over the civil suit against him.¹⁷⁷ His license to practice law was suspended as he received public reprimand from the Arkansas state bar.¹⁷⁸ Clinton’s last act as President created another

169. Harling, *supra* note 22, at 111.

170. *Id.* at 110–13.

171. Reform Act of 1832, 2 & 3 Will. 4, c. 65, §§ I, IV (Eng.) [hereinafter 1832 Act].

172. Harling, *supra* note 22, at 110–13.

173. Lord Irvine of Lairg, *Sovereignty in Comparative Perspective: Constitutionalism in Britain and America*, 76 N.Y.U. L. REV. 1, 12 (2001).

174. *Id.*

175. Rivka Weill, *Evolution v. Revolution: Dueling Models of Dualism*, 54 AM. J. COMP. L. 429, 438–39 (2006) (indicating House of Lords prior to the 1832 Act controlled the House of Commons, and that, after passage of the 1832 Act, such control was extinguished).

176. CANON & MAYER, *supra* note 88, at 54.

177. Peter Baker, *For Clinton, Long-Delayed Words and Painful What-Ifs*, WASH. POST, Jan. 20, 2001, at A18 (referring to *Jones v. Clinton* federal civil litigation in Arkansas and indicating a \$90,000 fine).

178. Editorial, *The Past: Cleansing Clinton*, CHRISTIAN SCI. MONITOR, Jan 22, 2001, at 12 (recounting deal reached between Independent Counsel and Clinton in exchange for no further criminal prosecution against Clinton).

scandal as he pardoned a number of federal criminals in the last hours of his term.¹⁷⁹

All but one of the House Managers who prosecuted the President in the Senate trial were re-elected.¹⁸⁰ In 2000, the country went through the closest presidential election in American history, which led some to advocate constitutional reform of the presidential electoral process.¹⁸¹ The Republican candidate, George W. Bush, won the election with the controversial assistance of the United States Supreme Court.¹⁸² Likewise, in the 2000 federal congressional elections, Republicans retained their legislative majority in the House of Representatives, but lost their majority in the Senate (50 Republicans to 50 Democrats—deadlock between the two parties).¹⁸³ The Democrats, President Clinton’s political party, did not win the various state gubernatorial elections, leaving the Democrats without a governing majority in either the “White House, the Senate, the House nor a majority of the nation’s governorships for the first time since 1954.”¹⁸⁴ As one journalist in 2000 aptly asserted about President Clinton’s successor, George W. Bush, Bush assumed the presidency with: “No majority[;] No mandate[;] Not even broad public agreement that he deserved the prize”¹⁸⁵

179. See Steve Chapman, *Pardon Me, But Disgust Over Clinton is Not New*, CHI. TRIB., Feb. 25, 2001, at 17; Karen Masterson, *GOP’s Sen. Specter raises 2nd Clinton impeachment/One Democrat labels ex-president ‘brain-dead’*, HOUS. CHRON., Feb. 12, 2001, at 4. For polling statistics evidencing the public’s fatigue from the Clinton scandals and possible impacts on the results of the 2000 presidential election, see Stanley A. Renshon, *The Polls: The Public’s Response to the Clinton scandals: Part 2: Diverse Explanations and Clearer Consequences*, 32 PRESIDENTIAL STUD. Q. 412, 421–26 (2002).

180. Edward Walsh, *House Impeachment Leaders Are Managing Just Fine*, WASH. POST, May 22, 2001, at A19.

181. Arthur Schlesinger, Jr., *Fixing the Electoral College*, WASH. POST, Dec. 19, 2000, at A39.

182. Linda Greenhouse, *Divining the Consequences of a Court Divided*, N.Y. TIMES, Dec. 17, 2000, at 4.1.

183. Ronald Brownstein, *The Presidential Transition: Bush Has Legitimacy, but It’s Fragile; Leadership: Most Americans are ready to accept him as president, but 44% think Gore would have won a recount*, L.A. TIMES, Dec. 17, 2000, at A1. Democrats briefly held the majority in the Senate when a Republican, Senator James Jeffords of Vermont, changed his party affiliation to Democrat on May 24, 2001. Party Division in the Senate, 1789–Present, http://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm (last visited Mar. 13, 2007). Technically, the Democrats held a majority in the Senate during a portion of the deadlock period from January 3 to 20, 2001 because the Vice President of the United States, a voting member of the Senate in case of a tie vote, was a Democrat. However, when the Republican President and Vice President were sworn into office on January 20, 2001, the Republicans assumed a majority in the Senate for the same reason. *Id.*

184. Adam Clymer, *Democrats Seek a Silver Lining*, N.Y. TIMES, Dec. 17, 2000, at WK 5.

185. David S. Broder, *A Weak Hand . . .*, WASH. POST, Dec. 17, 2000, at B7.

Within a year after Clinton left office, America suffered the most devastating terrorist attack in United States history.¹⁸⁶ This event did much to alter the political realities of American government. The nation plunged into armed conflict, principally in Afghanistan and Iraq.¹⁸⁷ American armed forces swept away the ruling factions in both nations, but have yet to quell civil unrest in either country.¹⁸⁸ The extent to which the Clinton impeachment brought about these events is a subject left to historians to discover.¹⁸⁹ Nonetheless, within this article the terrorist attack is considered merely as a historical fact that happened after the episode involving President Clinton's impeachment.

Following the terrorist attack, the Republicans captured strong majorities in both Houses of Congress in the 2002 federal elections.¹⁹⁰ The Republicans retained congressional power until 2006 when the Democrats obtained a legislative majority in both Houses.¹⁹¹ President George W. Bush convincingly won a second term in the 2004 election.¹⁹²

The extent of the aftermath of the Clinton impeachment is yet unknown. American political institutions exist precariously while popular disdain for the federal government remains. After Clinton's impeachment, no major public revolt or sweeping reforms of the federal system occurred. The only significant legislative response to the impeachment was the elimination of the Independent Counsel position.¹⁹³ Yet, Clinton's impeachment assured future American presidents will reside in office more securely than their predecessors because impeachment as a method

186. S. Res. 22, 107th Cong., 115 Stat. 222 (2001) (joint resolution regarding terrorist attacks launched against the United States on September 11, 2001).

187. S. Res. 23, 107th Cong. (2001) (authorization for Use of Military Force).

188. General David H. Petraeus, Report to Congress on the Situation in Iraq (2007), <http://www.foreignaffairs.house.gov/110/pet091007.pdf>; Statement of Richard A. Boucher, Assistant Secretary of State for South and Central Asian Affairs, Before the Senate Foreign Relations Committee 6–7 (2007), <http://foreign.senate.gov/testimony/2007/BoucherTestimony070308.pdf>.

189. A recent CNN poll reflects that Americans in 2006 placed blame on both the Clinton and Bush Administrations for the September 11, 2001 terrorist attacks. CNN Poll August 30–September 2, 2006, <http://i.a.cnn.net/cnn/2006/images/09/11/rel21i.pdf> (illustrating similar sentiments in polls taken in 2001 and 2004).

190. STATISTICS OF CONGRESSIONAL ELECTION OF NOVEMBER 5, 2002 54 (2003), http://clerk.house.gov/member_info/electionInfo/2002election.pdf.

191. Party Divisions of the House of Representatives (1789 to Present), http://clerk.house.gov/art_history/house_history/partyDiv.html (last visited Mar. 13, 2007) (showing in table format party divisions in House of Representatives through the 2006 congressional elections); Party Division in the Senate, 1789–Present, *supra* note 183 (showing in table format party divisions in Senate through the 2006 Congressional Elections).

192. STATISTICS OF CONGRESSIONAL ELECTION OF NOVEMBER 2, 2004, http://clerk.house.gov/member_info/electionInfo/2004/Table.htm (first table illustrates results of 2004 Presidential Election).

193. CANON & MAYER, *supra* note 88, at 58.

for political change proved unpopular.¹⁹⁴ If American history follows the Carolinian example, one can expect that great legislative reform is on the horizon, that governmental institutions will be substantially altered, and that a more viral form of government, more attentive to popular interests, will arise.¹⁹⁵

II. LEGAL PROCEDURES AS POLITICAL WEAPONS

Senator Thomas Daschle, then-Democratic leader in the Senate, asserted at the close of the impeachment trial of President Clinton, “[T]he law must be preserved as an instrument for the rendering of justice, not manipulated to serve as another readily accessible weapon to be used against political adversaries.”¹⁹⁶

Echoing the Senator’s assertion, a scholar writing about the Clinton impeachment stated impeachment was not meant to be “a weapon for one party to destroy a particular President.”¹⁹⁷ Senator Richard Durbin noted that Thomas Jefferson feared impeachment “could be a formidable partisan weapon. He feared that a determined faction in Congress would use it ‘ . . . for getting rid of any man whom they consider as dangerous to their views’”¹⁹⁸

Despite the aforementioned statements, legal procedures—impeachment in the case of Clinton and a Bill of Pains and Penalties in the case of Caroline—are utilized as political weapons. First, the rationale behind selecting legal procedures as a political weapon for accomplishing political change is explored. Second, the success of legal procedures as political weapons are discussed in order to evaluate whether selecting the law as a weapon for political change is actually effective in achieving the desired results.

194. HAROLD H. BUFF, *BALANCE OF FORCES: SEPERATION OF POWERS LAW IN THE ADMINISTRATIVE STATE* 325 (2006) (asserting politicized impeachment deterred by Clinton episode); Michael J. Gerhardt, *Impeachment Defanged and Other Institutional Ramifications of the Clinton Scandals*, 60 MD. L. REV. 59, 70–72 (2001).

195. On the specific reforms enacted in the period immediately following the trial of Queen Caroline, see generally A.V. DICEY, *LECTURES ON THE RELATION BETWEEN LAW AND PUBLIC OPINION IN ENGLAND DURING THE NINETEENTH CENTURY* (photo. reprint 1996) (1905).

196. S. DOC. NO. 106-4, at 2017 (1999).

197. BUSBY, *supra* note 100, at 213. Another scholar concluded there is a risk “impeachment will become a political weapon, one to be used as a kind of substitute for the tasks of running the country and making people’s lives better.” Cass R. Sunstein, *Impeaching the President*, 147 U. PA. L. REV. 279, 312 (1998).

198. S. DOC. NO. 106-4, at 2710 (1999).

A. *Why Select the Law to Accomplish Political Change?*

Law cloaks an endeavor to ferment political reform in legitimacy, which is why legal procedures are an obvious choice for accomplishing political transformation.¹⁹⁹ The law imposes strict rules for collecting, examining, and distributing evidence.²⁰⁰ Actors using law as a weapon may coerce their opponent through procedure to adopt positions calculated to discredit the adversary. Moreover, the procedural constraints imposed by law enable parties to shape information in the manner most calculated to achieve maximum persuasive effect.²⁰¹

Reference to law permits appeal to authority because the law is steeped in tradition.²⁰² Law itself “unites all cases under one ruling principle.”²⁰³ Lawyers are required to implement legal procedures because “[i]f law is supreme, their skills are requisite for proper rule.”²⁰⁴ It is true that in both the United States and England the majority of “legislators, jurists, and governmental executives are lawyers”²⁰⁵ This fact led one eminent scholar to surmise “[i]t was the legal profession—up to the Chief Justice [of the United States Supreme Court] himself—that orchestrated this profound series of events in America” involving the impeachment and trial of President Clinton.²⁰⁶

199. John Rawls, *The Justification of Civil Disobedience*, in *THE DUTY TO OBEY THE LAW* 55 (William A. Edmonson, ed., 1999). Rawls asserts that “civil disobedience expresses disobedience to law within the limits of fidelity to law, and this feature of it helps to establish in the eyes of the majority that it is indeed conscientious and sincere, that it is really meant to address their sense of justice.” *Id.*

200. This is evidenced by the voluminous amount of transcripts and evidence collected and published in the trial of Caroline and the Clinton impeachment. *See generally* A CORRECT, FULL, AND IMPARTIAL REPORT, OF THE TRIAL OF HER MAJESTY, CAROLINE, QUEEN CONSORT OF GREAT BRITAIN, BEFORE THE HOUSE OF PEERS; ON THE BILL OF PAINS AND PENALTIES; WITH AUTHENTIC PARTICULARS, EMBRACING EVERY CIRCUMSTANCE CONNECTED WITH, AND ILLUSTRATIVE OF, THE SUBJECT OF THIS MOMENTOUS EVENT INTERSPERSED WITH ORIGINAL LETTERS, AND OTHER CURIOUS AND INTERESTING DOCUMENTS, NOT GENERALLY KNOWN, AND NEVER BEFORE PUBLISHED, INCLUDING, AT LARGE, HER MAJESTY’S DEFENCE (J.H. Adolphus ed., William S. Hein & Co. Inc. 2001) (1820) (reproducing record of trial and evidence submitted); S. DOC. No. 106-4 (1999) (excerpting portions of proceedings in House of Representatives and Senate into four volumes).

201. *See* John J. Miller, *Argument Efficacy: Evaluating the Public Argument of President Bill Clinton’s Impeachment Crisis*, 40 ARGUMENTATION & ADVOCACY 226, 231–34 (2004) (describing arguments of the parties to the Clinton impeachment and how these statements were structured to achieve deliberate ends).

202. Oliver Wendell Holmes, *The Path of The Law*, 10 HARV. L. REV. 456, 469 (1897) (declaring to know reason for existence of law must refer to tradition).

203. HUGH P. McDONALD, *POLITICAL PHILOSOPHY AND IDEOLOGY* 144 (1997).

204. *Id.*

205. *Id.*

206. Robert F. Drinan, S.J., *Reflections on Lawyers, Legal Ethics and The Clinton Impeachment*, 68 FORDHAM L. REV. 559, 564 (1999).

If lawyers were the cause of the impeachment—and the same may be said of the trial of Queen Caroline—then this Article should focus solely on lawyers’ use of legal procedures as political weapons.²⁰⁷ Despite the abundance of legal talent appearing in the Caroline and Clinton sagas, actors in either epoch did not necessarily seek to achieve legal goals, but utilized lawful processes to attain overtly political prizes. The Whigs and radicals supported the Queen’s cause in hopes of receiving political benefits and increased domestic freedoms.²⁰⁸ In the case of Clinton, the Republicans sought the removal of the President as a means to achieve greater electoral success.²⁰⁹ Couched in law and resulting from legal processes, Caroline’s trial and Clinton’s impeachment were not calculated uses of legal procedures by lawyers to accomplish legal goals, i.e., overturning specific statutes or rules. Instead, parties in both instances sought extensive alteration of the political status quo. This is evidenced in Caroline’s case by the radicals and Whigs who sought a new political order more responsive to populous concerns.²¹⁰ In Clinton’s case, the Republicans sought new legislative authority to implement sweeping procedural changes within the Congress and vast changes throughout the Nation through their Contract with America.²¹¹ Therefore, this Article is properly focused on the use of legal procedures by politicians to achieve political goals.²¹² It may be argued, however, that legal procedures are never political weapons. Instead, reference to such procedures results from the exercise of processes constituted to avert destructive revolution.²¹³ Hence, liberal democratic society requires citizens to use these lawful processes to accomplish political goals, rather than take up arms in bloody revolt.²¹⁴

207. See *supra* notes 37–41.

208. HARRAL, *supra* note 6, at 25 (Whigs and radicals united in defense of Caroline); HARLING, *supra* note 22, at 104 (Whigs sought King’s patronage and pursued practical reform efforts).

209. See RAE & CAMBPELL, *supra* note 129, at 21.

210. See HARLING, *supra* note 22, at 99, 110 (indicating that radicals called for parliamentary reform and universal male suffrage); Lord Irvine of Lairg, *supra* note 173, at 12–13 (indicating populous shift initiated by the Whig sponsored 1832 Act).

211. See RAE & CAMBPELL, *supra* note 129, at 20; Keith E. Whittington, *Bill Clinton Was No Andrew Johnson: Comparing Two Impeachments*, 2 U. PA. J. CONST. L. 422, 450–56 (2000).

212. Although some politicians are lawyers, and their preference for legal modes to accomplish political ends may result from their familiarity with the law.

213. See generally RAOUL BERGER, *IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS* (1974) (tracing English and American legal history relating to impeachments).

214. See COREY BRETTSCHEIDER, *DEMOCRATIC RIGHTS THE SUBSTANCE OF SELF-GOVERNMENT* 52 (2007) (indicating liberal democratic citizenship implicates resort to procedure to vindicate rights); see generally SANFORD LAKOFF, *DEMOCRACY: HISTORY, THEORY, PRACTICE* 99–114 (1996) (describing elements of liberal democracy).

Historically, the procedures utilized against Caroline and Clinton were established to avert civil armed conflict.²¹⁵ Used in a proper context these legal processes are not political weapons. Rather, it is the deliberate selection of law when reliance on legal procedures is not required or merited that characterizes such use as political weapons. The Bill of Pains and Penalties was not mandated for the purposes expounded by its authors against Caroline. As previously discussed, such a Bill's legal validity was questionable in Caroline's time and in its previous enactments.²¹⁶ Similarly, in the Clinton case, there is ample evidence that the mechanism of impeachment was not contemplated to be used in situations like the factual scenario providing the basis for the impeachment of Clinton.²¹⁷ Indeed, most prominent legal scholars detested impeachment in Clinton's circumstances.²¹⁸

Legal procedures are also chosen to accomplish political aims because law furnishes individuals with means to attack their political opponents across a broad spectrum of issues. Much like a civil litigant who may plead as many alternative theories in a complaint as are plausible, use of legal procedures as political weapons enable users to mount varying and substantial assaults regarding multiple political issues.²¹⁹ In Caroline's case, her trial was used to attack the monarchy, the administration, the laws repressing English civil liberties, and social inequities between the various social classes of Britain.²²⁰ Clinton's impeachment served to vindicate conservative moral opinions, repudiate the exercise of presidential powers, dissuade party voters from endorsing similar

215. 2 Records of the Federal Constitution of 1787 67 (Max Farrand ed., 1937) (Randolph asserting punishment through impeachment would avert insurrections).

216. HARRAL, *supra* note 6, at 25 (such a bill, resorted to in cases of special emergency, was an exception to the common law); SMITH, *supra* note 1, at 427 (indicating such a Bill an unconstitutional and discreditable act).

217. Four hundred and forty-three law professors executed a letter to Congress that asserted impeachment was improper in Clinton's situation. 144 CONG. REC. H9649-9650 (daily ed. Oct. 6, 1998) (letter read into the record and submitted by Rep. Elizabeth Furse); Daniel H. Pollitt, *Sex in the Oval Office and Cover-Up Under Oath: Impeachable Offense?*, 77 N.C. L. REV. 259, 280-82 (1998) (concluding after recounting history of Constitution's impeachment clause and all prior cases of impeachment that Clinton's offences were not of the type considered impeachable); Laurence H. Tribe, *Defining "High Crimes and Misdemeanors": Basic Principles*, 67 GEO. WASH. L. REV. 712, 723-26 (1999) (concluding constitutional history does not support impeachment on facts presented in Clinton's case).

218. *Impeachment Inquiry: William Jefferson Clinton, President of the United States: Hearing Before the H. Comm. on the Judiciary*, 105th Cong. 52-320 (1998) (producing testimony of legal experts before House on standard for impeachment).

219. FED. R. CIV. P. 8(a),(e)(2).

220. WADDAMS, *supra* note 31.

candidates, discredit the Democrats ideology and assert legislative predominance.

With such a panoply of criticisms voiced through the legal procedures employed, the political party or individuals utilizing legal procedures for their own ends are able to present a multifaceted biased assault under a cloak of legitimacy provided by legal processes. These procedures supply the political actors with clout and permit those wielding law as a weapon to broadcast their political message disguised as legal arguments logically produced as a result of the procedures employed.²²¹ The format of the proceedings legitimizes politically motivated assaults as legal arguments supported by the tradition, rules, and substance of law.²²²

Caroline's supporters levied vitriolic attacks against the monarchy and administration couched in austere declarations that the Queen's treatment violated English constitutional precepts.²²³ The procedural format of a Bill of Pains and Penalties provided the Queen's supporters a lawful forum to voice opposition otherwise punishable by incarceration for sedition.²²⁴ Similarly, those seeking Clinton's removal were able to extensively expound on the floor of the House, in Committee, and in the well of the Senate, the moral and political rationales for Clinton to be removed from office.²²⁵ The Republicans acquired a bully-pulpit whose audience was the entire television-viewing public to proclaim their support of the prosecution of a defendant charged with high crimes and misdemeanors.²²⁶

It remains to be discovered whether use of law is an effective method to achieve and implement political goals. The following section addresses this issue and considers whether, in specific circumstances, lawful processes may be justly appropriated by political actors to achieve overtly political objectives.

221. See ALF ROSS, ON LAW AND JUSTICE 59 (2004) (describing legal system as institutional, leading to individual's perception of results of legal procedures as objective and externally given); accord N.M. KORKUNOV, GENERAL THEORY OF LAW 161 (W.G. Hastings trans., Modern Legal Philosophy Series 2d ed. 1968) (1922).

222. See Joseph Raz, *The Obligation to Obey: Revision and Tradition*, 1 NOTRE DAME J.L. ETHICS & PUB. POL'Y 139, 154 (1984) (asserting respect for law results from belief in obligation to obey law because law is individual and communal).

223. See ROBINS, *supra* note 2, at 146-64.

224. See David G. Barnum, *The Clear and Present Danger Test in Anglo-American and European Law*, 7 SAN DIEGO INT'L L.J. 263, 265-67 (2006) (describing content of nineteenth century law of seditious libel).

225. See generally S. DOC. NO. 106-4 (1999).

226. See U.S. CONST. art. II, § 4 (describing standard for impeachment as commission of high crimes and misdemeanors, bribery, or treason).

B. Are Legal Procedures An Effective Method for Altering Political Circumstances?

To evaluate whether legal procedures are an effective method for achieving political aims or altering political circumstances, reference to the two examples of Caroline and Clinton is necessary. The trial of Caroline did not immediately result in the legislative or power changes that the Whigs or radicals hoped for.²²⁷ The trial did, however, quiet the zeal of the radicals as the King hoped.²²⁸ Yet within fifteen years of the trial, the opposition party accomplished their reform objectives by enacting sweeping legislative and social reforms.²²⁹ Hence, in Caroline's case, selection of legal procedures did accomplish the political aims of the King effectively. However, the major supporters of the Queen's trial, the radicals and Whigs, did not receive immediate assistance in achieving their political goals from the legal procedures employed.²³⁰

Nonetheless, the reforms advocated by the radicals and Whigs were eventually implemented and the monarchy greatly lost its political authority in the years following the trial.²³¹ It is not a tenuous assertion to declare the trial a major motivation for these subsequent events. Therefore, the use of legal procedures in Caroline's example proved immediately effective to the King and subsequently effective to other such political actors.

Turning to the Clinton impeachment, the Republicans saw an initial setback in the 1998 congressional elections, but regained power in the 2000 election with George W. Bush assuming the presidency.²³² In the 2002 federal congressional elections their continued success may be attributed to the mixed influence of the impeachment and the exemplary response to the 2001 terrorist attack by President Bush.²³³ Therefore, the instrumentalities of law as a weapon procured Republicans resounding successes in the Clinton case because the Republicans achieved substantial

227. *See supra* notes 163–66.

228. *See supra* notes 159–70.

229. *See supra* notes 171–74.

230. *See supra* notes 159–70, 171–74.

231. *See* L. Kinvin Wroth, *Note for a Comparative Study of the Origins of Federalism in the United States and Canada*, 15 ARIZ. J. INT'L & COMP. L. 93, 113 (1998) (describing effect of 1832 Act as establishing "responsible government" and making the King responsive to the ministers, rather than the ministers responsive to the King's will). *See also* Steven G. Calabresi & Joan L. Larsen, *One Person, One Office: Separation of Powers or Separation of Personnel?*, 79 CORNELL L. REV. 1045, 1096–97 (1994) (describing King's patronage).

232. *See supra* note 183.

233. *See supra* notes 190–91.

political gains: assumption of the presidency and legislative dominance in the Congress.

Objectively, both uses of legal procedure were successes. Yet the Carolinian example should only be emulated because the motivations were in furtherance of just political and societal transformations. In the Carolinian example, the legal procedures were not first proposed by actors who later used the processes for ulterior political motivations. The Whigs and radicals had no other available effective means to dramatically communicate their protests and opinions. Under these or similar circumstances, the law was rightly used as a political weapon.

Citizens may be “apt to think political obligations march in step with legal obligations, and this may be a natural assumption since legislation is a political process, effected by the sovereign.”²³⁴ Legal and political obligations should coincide when “there are good moral reasons why we should obey the laws promulgated by the state”²³⁵ When an extralegal event occurs that threatens laws enacted representing good moral reasons, citizens should possess an obligation to defend such laws.²³⁶ Moreover, realizing moral reasons are quite divergent and individualized, a reformulation of the previous assertion may be that citizens are obligated to defend laws that protect and preserve their fundamental rights or contribute (in the broadest sense) to protection of such rights.²³⁷ When extralegal events transpire that collectively threaten citizens’ fundamental rights, then individuals have an obligation to utilize law in a manner to protect these threatened liberties.²³⁸ Dogmatic adherence to legal procedures is secondary to securing the rights laws are enacted to protect.²³⁹ As in Caroline’s case, civil liberties were suppressed for no reason other than to satisfy the whim of those in power.²⁴⁰ Under these

234. DUDLEY KNOWLES, *POLITICAL PHILOSOPHY* 241 (2001).

235. *Id.* Compare *id.* with H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593 (1958) (arguing separation of law from morality).

236. For example, Dr. Martin Luther King, Jr. asserted adherence to the Supreme Court’s *Brown v. Board of Education* decision was necessary, but advocated disobedience to other laws lacking similar justification. Martin Luther King, *Letter From a Birmingham Jail*, reprinted in JOEL FEINBERG & JULES COHEN, *PHILOSOPHY OF LAW* 213–21 (8th ed. 2008).

237. On the great difference between rights and laws see THOMAS HOBBS, *DE CIVI* 92 (Howard Warrender, ed., Oxford Univ. Press 1983) (1651) (asserting that rights are freedoms and laws are fetters).

238. See JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* 323–27 (The Law Book Exchange 2006) (1698) (advocating appeal to law initially to redress grievance with government unless no such procedure available).

239. Cf. RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 192 (1978) (asserting citizen possesses right to disobey law when law wrongly infringes upon right).

240. See *supra* notes 23–29.

circumstances—and only in these situations—is the use of law and its concomitant processes justified as a political weapon.

In condoning employment of legal procedures as a political weapon in severely limited occurrences, generalizations advocating such use in trivial instances should not follow. Use of legal procedures in situations similar to that of the Republicans in the impeachment of President Clinton are unwarranted because vital rights of the populous were not in imminent peril. Republicans used the guise of law in order to accomplish partisan political goals uninfluenced by securing popular rights. Such use is not approved and should be avoided.

It is advocated that law may be used as a political weapon when such use furthers essential liberal democratic rights. Furtherance of such rights should not be in an effort to eclipse the rights of other groups or minority interests. For that matter, wielding law as a political weapon should not be aimed at creating anarchy or armed civil conflict, but should be reserved to those extreme instances where necessity requires reference to legal procedures in vindication of underlying suppressed or restricted rights.

III. CONCLUDING REMARKS

History is replete with the unheeded warnings of one generation to another. Let the accounts of Queen Caroline and President William Jefferson Clinton warn the next generation against the use of law and its mechanisms for unsavory motives and preserve such processes for legitimate and necessary causes. It is deference, not to law itself but to the principles underlying law, that is required. Citizens must recognize the meaning of the law, rather than the endless rules that ensure and protect the root of such procedures. If a citizenry adheres to the fundamental precepts upon which liberal democratic law is founded on, then the populace shall refrain from utilizing legal procedures as political weapons in furtherance of unjust causes.

Thus, the purpose of this article is to ensure recognition of future uses of legal procedures as political weapons in service of base political causes. Prevention of political appropriation of law as a weapon requires public vigilance. When citizens protect the sanctity of legal procedures from encroachment, they ensure law serves as a tool in sustaining liberal democratic freedoms.