

PASSIONS, POLITICS AND THE REMOVAL OF A PRESIDENT: LESSONS LEARNED FROM THE IMPEACHMENT OF PRESIDENT CLINTON

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ABSTRACT: The Constitution of the United States provides an extraordinary means for addressing unlawful misconduct by the president: impeachment. This tool has only been advanced through the House of Representatives twice in the history of the United States, first with the impeachment of Andrew Johnson in 1867, and then with William Jefferson Clinton in 1998. Neither president was ultimately removed from office as a result of the impeachment proceedings. Using the Clinton impeachment as a case study, this paper will explore the question of whether the tool of impeachment is ever workable by examining the challenges facing Congress in conducting an impeachment inquiry and two of the key elements necessary for fulfilling this responsibility.

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INTRODUCTION

On December 19, 1998, in an unusual Saturday session on Capitol Hill, the U.S. House of Representatives impeached William Jefferson Clinton, the 42nd President of the United States. The House approved two articles of impeachment. By a vote of 228 to 206, the President was charged with committing perjury before a federal grand jury. By a closer vote of 221 to 212, the President was charged with obstruction of justice.

Mr. Clinton was only the second president in U.S. history to be impeached. In 1867, Andrew Johnson was impeached by the House on 11 articles, but subsequently acquitted in the Senate trial by one vote. It may be worth noting that Article X charged that President Johnson was in violation of the “courtesies which ought to exist and be maintained between the executive and legislative branches of the government,” and that he attempted “to bring into disgrace, ridicule, hatred, contempt and reproach, the Congress of the United States...by making certain

intemperate, inflammatory and scandalous harangues.”¹

Deep political divisions are not new to American politics.

In Federalist No. 65, Alexander Hamilton observed that the misconduct in question in an impeachment proceeding will by its nature be “POLITICAL” because it will be “related chiefly to injuries done immediately to the society itself.”² He presciently added:

The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties, more or less friendly, or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.³

This article addresses some of the enormous challenges confronting the legislative branch in an impeachment inquiry. Hamilton predicted that an attempt to impeach a president will “agitate the passions of the whole

1 DEPT. OF THE INTERIOR, THE ARTICLES OF IMPEACHMENT: ARTICLE X (1868).

2 THE FEDERALIST NO. 65 (Alexander Hamilton).

3 *Id.*

community.”⁴ Can impeachment ever be enacted without causing undue distress to the public? Using the impeachment of President Clinton as a case study and the benefit of my personal involvement with that matter, I suggest that a rigorous commitment to the principles of fair process and the cultivation of a significant bipartisan consensus are critically necessary in the fulfillment of this solemn responsibility.

The Clinton impeachment proceedings, as discussed below, involved conduct harmful to the public, the severity of which has often been debated by reasonable minds. Few would dispute the wrongfulness of a president lying under oath or obstructing justice, but the salient question in this context was whether such offenses justified President Clinton’s removal from office. If a president’s crimes were especially heinous in nature and supported by a profound weight of evidence, bipartisan agreement for impeachment and conviction would be far more likely. In applying lessons from the past to any future process, this article assumes that the behavior in question will not be of this most egregious

4 *Id.*

type.⁵

Two key elements of an impeachment inquiry will be considered: 1) the role of the Chair of the Committee on the Judiciary in the House of Representatives as the singular leader of an impeachment effort; and 2) the appropriate proceedings of the House of Representatives leading up to consideration of articles of impeachment by the House. In order to use the Clinton impeachment as a case study, a brief summary of the facts in the matter may be helpful.

BACKGROUND ON THE CLINTON IMPEACHMENT

The events leading to the impeachment of President Clinton began with a law suit by Arkansas state employee Paula Jones in 1994 alleging that she had been sexually harassed by Clinton while he was governor of Arkansas. Potentially impeachable behavior began to unfold in the weeks leading up to civil depositions in the Jones lawsuit in late 1997. On December 5, 1997, Monica Lewinsky's name

5 In the Nixon impeachment proceedings, bipartisan support for impeachment gradually emerged in the House Judiciary Committee as the severity of the President's misconduct became known. The high likelihood of impeachment triggered Nixon's resignation.

first appeared on a witness list in the Jones case, revealing to the President that Jones' lawyers may have found out about his inappropriate relationship with Lewinsky, who was a White House intern when their sexual interludes first began. Concern about the relationship's discovery triggered a series of actions to cover up the scandalous affair by the President, including some actions the House considered to be criminal.

More than two decades removed from the tumultuous events of 1998 and early 1999, most Americans would be hard-pressed to identify the specific conduct for which President Clinton was impeached. That was most certainly not the case in the fall of 1998 due to around-the-clock media coverage and the publication of Independent Counsel Kenneth Starr's report to Congress. The behavior referenced in the Articles of Impeachment included:

- encouraging a witness in a federal civil rights action to execute a sworn affidavit that contained false and misleading testimony;
- encouraging a witness in a federal civil rights action to provide false and misleading testimony;
- engaging in a scheme to conceal evidence that had been subpoenaed in a federal civil rights action;

- attempting to secure employment for a witness in a federal civil rights action in order to encourage the provision of false and misleading testimony;
- allowing the President's attorney to provide false and misleading information to a federal judge in a federal civil rights action; and
- Providing false and misleading testimony before a federal grand jury.⁶

Congressional Democrats showed little interest in disputing the accuracy of the factual information supporting the impeachment proceedings. Instead, the President's supporters argued forcefully that the entire narrative subsequent to and connected with the President's unacceptable relationship with Lewinsky did not warrant impeachment and removal from office. According to the polling data at the time, a majority of the American public agreed with the Democratic position. Not surprisingly, the U.S. Senate eventually acquitted the President on both articles by votes of 45-55 on the perjury charge and 50-50 on the obstruction of justice article. Sixty-seven votes are needed for conviction and removal.

6 H.R. REP. NO 105-830, at 7-10 (1998).

MY ROLE

In conjunction with the Starr Report's arrival on Capitol Hill on September 9, 1998, House Judiciary Committee Chairman Henry J. Hyde (R-IL) assembled a staff to work on the anticipated inquiry. I was serving at the time as the Chief Counsel of the Subcommittee on Crime of the House Judiciary Committee. Chairman Hyde asked me to serve as the "Chief Counsel/Director of Communications" for the impeachment inquiry. With no small amount of trepidation, I accepted.

My responsibilities included formulating daily messaging and serving as the Committee Republicans' spokesperson. While lawyers generally focus on the details of a given case and avoid as much as possible being distracted or influenced by public opinion, I was expected to study public perceptions and understand how best to respond to media inquiries and prepare Republican members for their public comments. I had, therefore, a unique opportunity to appreciate the political challenges of a presidential impeachment.

THE WORK OF THE HOUSE JUDICIARY COMMITTEE CHAIRMAN

Chairman Henry J. Hyde was a man of remarkable intelligence, wit, and civility. He was universally regarded at the outset of the Clinton impeachment proceedings as exceptionally fair-minded and committed to bipartisanship. Even as the House process came to a conclusion in December, Democratic members still acknowledged that Hyde maintained his cordiality and concern for fairness.

Speaking on the House floor at the outset of the impeachment process, Chairman Hyde challenged his colleagues to rise above partisan politics. He implored with soaring rhetoric, “Let us conduct ourselves and this inquiry in such a way as to vindicate the sacrifices of blood and treasure that have been made across the centuries to create and defend this last best hope of humanity on earth, the United States of America.”⁷

Though he worked tirelessly to address Democratic concerns and objections, Chairman Hyde eventually concluded that moving forward was necessary even if one party was almost unanimous in its opposition. He opened the

7 105 CONG. REC. 20,020 (daily ed. Sept. 11, 1998).

floor debate with the following assertions:

Mr. Speaker, my colleagues of the people's House, I wish to talk to you about the rule of law. After months of argument, hours of debate, there is no need for further complexity. The question before this House is rather simple. It's not a question of sex. Sexual misconduct and adultery are private acts and are none of Congress' business.

It's not even a question of lying about sex. The matter before the House is a question of lying under oath. This is a public act, not a private act. This is called perjury. The matter before the House is a question of the willful, premeditated, deliberate corruption of the nation's system of justice. Perjury and obstruction of justice cannot be reconciled with the office of the president of the United States.

The personal fate of the president is not the issue. The political fate of his party is not the issue. The Dow Jones Industrial Average is not the issue. The issue is perjury – lying under oath. The issue is obstruction of justice, which the president has sworn the most solemn oath to uphold.⁸

As the person charged with the duty of leading an impeachment inquiry, Henry Hyde's magnanimous character proved insufficient for overcoming Alexander Hamilton's warnings about pre-existing party factions. To the degree

⁸ Chairman Hyde, *Opening Statement during House Debate on Articles of Impeachment against Pres. Clinton*, (Dec. 18, 1998).

that any future leader lacks Hyde's devotion to fairness and civility and is less determined to seek genuinely the opposing party's cooperation, the experience of the Clinton impeachment would suggest that the historic episode will be "doomed to be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt."⁹

PROCEEDINGS OF THE HOUSE

The Starr Report received by the House in early September of 1998 was extensive, requiring 18 boxes to contain all of its papers. Along with Starr's summary of his investigation, the boxes contained transcripts of interviews and testimony, investigative reports and various other documents. House leaders¹⁰ met the next day to consider, among other things, whether the report should be released to the public. Given the report's salacious content, Chairman Hyde expressed concern about the appropriateness of this

9 THE FEDERALIST NO. 65 (Alexander Hamilton).

10 This group included Speaker Newt Gingrich, Majority Leader Richard Arney, Minority Leader Richard Gephardt, Judiciary Committee Chairman Henry Hyde and Ranking Minority Member John Conyers.

action. Speaker of the House Newt Gingrich and senior Democrats disagreed with Hyde, and the report was released to the public. Publication of the unsavory details of the Clinton-Lewinsky relationship left the President permanently damaged, but it also began to impact public opinion against the GOP for what appeared to be political gamesmanship.

It is a curious fact that Democratic leaders favored immediate release of the report. Perhaps this was because a slower gradual disclosure of information would drag out the severely negative news concerning the President. Another reason could have been that immediate release would help ignite political backfire against congressional Republicans. Regardless of the motive, it is clearer in hindsight that the political fallout was already starting to build five months before the final Senate votes.

Public dissatisfaction became clearer when on September 21, the video tape of Clinton's four-and-a-half hour grand jury testimony was nationally broadcast on C-Span. No doubt the President's supporters cringed when he uttered his infamous response, "Well, it depends what the definition

of 'is' is."¹¹ However, televising the embarrassing questions from the Starr prosecutorial team further aggravated public concern about the GOP's motives.

In early October, the House easily passed a resolution authorizing the impeachment inquiry by the Judiciary Committee. The resolution was nearly identical to the one written by Democrats two decades earlier, at the outset of the Nixon impeachment process. With the resolution in hand, Chairman Hyde could begin the committee process. Immediately, Committee Democrats began to voice their objections. They wanted first to define the constitutional standard for impeachment, since there was a strong view on their side of the aisle that the President's behavior warranted sanction but not removal from office. They also wanted, though not with the same fervor, to employ an extensive fact-finding process, rather than relying on the evidence assembled by the Independent Counsel's office. Furthermore, there were simultaneous and contradictory calls for a speedy end to the process. This latter concern once again resonated

11 *Presidential Grand Jury Testimony*, (C-SPAN television broadcast Aug. 17, 1998).

with the public as it wearied from 24/7 news coverage of the inquiry.

Any question about where the American voters stood on the issue of impeachment became clearer with the results of the November midterm elections. The 1998 congressional elections should have been a political setback for Clinton, consistent with the historic pattern for a second term incumbent. Instead, Republicans lost five seats in the House. Later in the month – Speaker Gingrich, who had left no doubt about his strong support for impeachment leading up to the elections – announced his resignation.

Convinced that the President's conduct was a serious violation of his constitutional duty to uphold the rule of law, Hyde and the vast majority of the House Republican conference believed that the process should move forward. However, Chairman Hyde faced a quandary. Attempting to manage a restless public, he promised to complete the House's work by the end of the year. This made it easier for Democrats to object to a rushed process. In an effort to strengthen the factual record, Starr testified before the Committee in a marathon session on November 19.

In addition, the President was given 81 “do you admit or deny” questions that addressed all of the issues in the matter. Clinton cleverly provided responses to the questions on the Friday after Thanksgiving. Once again, however, the responses included considerable legal hairsplitting, and they set the stage for Committee and floor action on impeachment articles in December, 1998.

Following the nearly party-line passage of two articles of impeachment by the House, the process moved to the Senate at the start of the new year. By now, public opinion was generally set in opposition of Clinton’s removal from office. Believing that a two-thirds vote for conviction was not within reach, Senate Republican leaders wanted to find the best pathway for fulfilling their responsibilities with the least amount of political repercussion.

Chairman Hyde and twelve other GOP Judiciary Committee members were appointed by the Speaker to be “managers” in the Senate proceedings. Once again, these representatives felt duty-bound to press the case as effectively as possible. Some thought that if Monica Lewinsky and other witnesses could be heard in live testimony, public opinion

might shift. Senate leaders were dead set against what they judged would be an undignified spectacle. On February 12, the President was acquitted.

CONCLUSION

I worked in the House of Representatives for more than a decade, including as Chief Counsel and Director of Legislative Operations for the Majority Leader. Few if any members of Congress in that era had a stronger reputation for fair-mindedness than Henry Hyde. It is also entirely reasonable to conclude that President Clinton did lie under oath and obstruct justice. It is difficult to find a defense of Clinton's actions put forth by any party other than his own attorneys.

Nevertheless, the party alignments foreseen by Alexander Hamilton in Federalist #65 could not be overcome. What does this say about future impeachment efforts? First, congressional leaders should follow the example set by Henry Hyde and steadfastly avoid appearing to use impeachment to settle political scores or damage the president's standing with the American public. Attempting to overturn presidential

election results through legislative action severely threatens the peace of the nation. Public confidence in the judgments of elected representatives must be strong. Partisan clashes frequently played out before a watching public will destroy this essential confidence. Second, the president's supporters should be given a clear opportunity to state publicly where they stand with reference to the appropriate proceedings. Assuming the conduct in question raises legitimate concerns about a president's continued service in office, the onus should be on the president's supporters to identify what they consider to be an appropriate way forward. Absent some resulting bipartisan agreement, there is little reason to believe, especially in our highly divisive political and media climate, that moving forward would not be an enormous waste of time and particularly damaging to the public interest.

One Democrat on the House Judiciary Committee in 1998 captured some of these concerns quite well: "The impeachment of a President was reserved by the Framers of the Constitution for only the most severe threats against the nation and our system of government. It exists as a remedy to prevent the President from becoming a tyrant. It should

not be used for mere partisan purposes to overturn the will of the people as expressed in two national elections.”¹²

¹² H.R. REP. NO. 105-830, AT 302 (1998).

