

AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 11: Contemporary Era – Separation of Powers

Charges and Reply in the Impeachment of President William Clinton (1999)¹

In 1996, President Bill Clinton handily won reelection to a second term of office in a three-way race with Republican Senator Robert Dole and independent Ross Perot. During the midterm elections of 1994, Republicans gained a large number of seats to capture the U.S. House of Representatives for the first time since the Eisenhower administration and the U.S. Senate for the first time since the Reagan administration. In 1996, the Republicans maintained control of Congress, even as the Democratic Clinton retained the White House. His presidency had often been mired in controversy, and policymaking slowed to a crawl during his second term. During much of his presidency, Clinton, his wife, his Cabinet members, and aides were under criminal investigation by various independent counsels. Despite these investigations, Clinton's approval ratings remained high.

One of those independent counsel investigations, done by Kenneth Starr, a former federal judge and member of the Bush administration, focused on the allegations that President Clinton had engaged in a sexual relationship with a White House intern, Monica Lewinsky. The Lewinsky affair was of particular interest to the legal team supporting Paula Jones, who had filed a sexual harassment civil lawsuit in federal court against the president based on his alleged actions as governor of Arkansas. In a deposition for the Jones lawsuit in 1998, Clinton denied engaging in any sexual relations with Lewinsky. Soon thereafter, the president agreed to a financial settlement to end the Jones lawsuit. In later testimony to a federal grand jury, the president admitted that he had engaged in such a relationship with Lewinsky. Clinton was eventually held in contempt of court for perjury and his license to practice law was suspended.

In the midterm elections of 1998, Republicans lost a small number of seats in the House and retained control of both chambers of Congress. Shortly afterwards, the House held brief impeachment hearings and voted largely along party lines to impeach the president for perjury and obstruction of justice (encouraging perjury and concealing of evidence in the Jones suit) based on the findings in Starr's independent counsel report. In February 1999, the Senate acquitted the president of the impeachment charges, with several Republican senators voting not guilty. At the center of the Senate trial were questions about whether the president's grand jury testimony amounted to perjury and whether his actions surrounding the civil case met the constitutional standards of an impeachable offense.

What are the differences between how the House managers and the president's defense team understand impeachable offenses? How important are the oath of office and the integrity of the office to considerations of impeachment? Can the impeachment power be triggered by personal misconduct, as opposed to abuse of government power? Is the standard for impeaching a president different than the standard for impeaching a federal judge? What are the consequences – legal and political – of the failure of the Senate to convict the president on these charges? Is there something wrong with partisan voting in Congress on impeachment charges? Is the impeachment power still a useful device for maintaining responsibility in the executive?

¹ Excerpt taken from Senate Document No. 4, *Proceedings of the U.S. Senate in Impeachment Trial of President William Jefferson Clinton*, vol. 1, 106th Cong., 1st sess. (1999).

House of Representatives Articles of Impeachment

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Article I

In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of the President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice, in that:

On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth, and nothing but the truth before a Federal grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury

In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

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Answer of President William Jefferson Clinton to the Articles of Impeachment

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The charges in the two Articles of Impeachment do not permit the conviction and removal from office of a duly elected President. . . . The charges in the articles do not rise to the level of “high Crimes and Misdemeanors” as contemplated by the Founding Fathers, and they do not satisfy the rigorous constitutional standard applied throughout our Nation’s history. Accordingly, the Articles of Impeachment should be dismissed.

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Article I is unconstitutionally vague. No reasonable person could know what specific charges are being leveled against the President. It alleges that the President provided the grand jury with “perjurious, false, and misleading testimony” concerning “one or more” of four subject areas. But it fails to identify *any* specific statement by the President that is alleged to be perjurious, false, and misleading. The House has left the Senate and the President to guess what it had in mind.

One of the fundamental principles of our law and the Constitution is that a person has a right to know what specific charges he or she is facing. Without such fair warning, no one can prepare the defense to which every person is entitled. . . . Without a definite and specific identification of false statements, a trial becomes a moving target for the accused. . . .

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Article I is fatally flawed because it charges multiple instances of alleged perjurious, false and misleading statements in one article. The Constitution provides that “no person shall be convicted without the Concurrence of two thirds of the Members present,” and Senate Rule XXIII provides that “an article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial.” By the express terms of Article I, a Senator may vote for impeachment if he or she finds that there was perjurious, false and misleading testimony in “one or more” of four topic areas. This creates the very real possibility that conviction could occur even though Senators were in wide disagreement as to the alleged wrong committed. Put simply, the structure of Article I presents the possibility that the President could be convicted even though he would have been acquitted if separate votes were taken on each allegedly perjurious statement. . . .

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The effect of the President's misconduct has been devastating in several respects.

- 1) He violated repeatedly his oath to "preserve, protect and defend the Constitution of the United States."
- 2) He ignored his constitutional duty as chief law enforcement officer to "take care that the laws be faithfully executed."
- 3) He deliberately and unlawfully obstructed Paula Jones's rights as a citizen to due process and the equal protection of the laws, though he had sworn to protect those rights.
- 4) By his pattern of lies under oath, misleading statements and deceit, he has seriously undermined the integrity and credibility of the Office of President and thereby the honor and integrity of the United States.
- 5) His pattern of perjuries, obstruction of justice, and witness tampering has affected the truth seeking process which is the foundation of our legal system.
- 6) By mounting an assault in the truth seeking process, he has attacked the entire Judicial Branch of government.

... The Senate's own precedents establish beyond doubt that perjury warrants conviction and removal. During the 1980s, the Senate convicted three federal judges for committing perjury. . . . Two of the three judges removed in the 1980s were removed for perjury that had nothing to do with their official duties.

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... As the House Judiciary Committee stated in justifying an article of impeachment against President Nixon, the President not only has "the obligation that every citizen has to live under the law," but in addition has the duty "not merely to live by the law but to see that law faithfully applied." . . . When a President, as chief law enforcement officer of the United States, commits perjury, he violates [his] constitutional oath unique to his office and casts doubt on the notion that we are a nation ruled by laws and not men.

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... Consider this key language from the staff report [on the constitutional grounds for presidential impeachment in 1974] describing the type of conduct which gives rise to impeachment:

The emphasis has been on the significant effects of the conduct - *undermining the integrity of office, disregard of constitutional duties and oath of office, arrogation of power, abuse of the governmental process, adverse impact on the system of government.* (emphasis added).

Perjury and obstruction of justice clearly "undermine the integrity of office." They unavoidably erode respect for the office of the President. Such offenses obviously involve "disregard of [the President's] constitutional duties and oath of office." Moreover, these offenses have a direct and serious "adverse impact on the system of government." Obstruction of justice is by definition an assault on the due administration of justice - a core function of our system of government.

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Nothing in the text, structure, or history of the Constitution suggests that officials are subject to impeachment only for official misconduct. Perjury and obstruction of justice - even regarding a private matter - are offenses that substantially affect the President's official duties because they are grossly incompatible with his preeminent duty to "take care that the laws be faithfully executed." Regardless of their genesis, perjury and obstruction of justice are acts of public misconduct - they cannot be dismissed as understandable or trivial. Perjury and obstruction of justice are not private matters; they are crimes against the system of justice, for which impeachment, conviction, and removal are appropriate.

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This is a defining moment for the Presidency as an institution, because if the President is not convicted as a consequence of the conduct that has been portrayed, then no House of Representatives will ever be able to impeach again and no Senate will ever convict. The bar will be so high that only a convicted felon or a traitor will need to be concerned.

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