

Introduction

When the American founders gathered at the Pennsylvania State House in 1787, they shared a common understanding that the new American government would have to protect against tyranny. Facing the monumental task of creating a Constitution, the founders had the privilege of looking back on previous governments that had the same purpose, one of which was the Roman Republic. To protect against tyranny, the Roman Republic preserved a form of mixed government and held officials accountable through trials and processes of removal, akin to a form of impeachment. Looking back at the mixed government of ancient Rome, the founders created a government with a separation of powers between three branches with checks and balances to curb the power of each branch. Also like the ancient Romans, the founders recognized that a well-structured government is powerless against tyranny without the ability to remove officials who threaten the state. Considering the classical precedent of impeachment, the founders set forth a process for impeachment in the Constitution. Within the comparable government structures of ancient Rome and America, impeachment served a similar purpose to protect against tyranny. This thesis first examines how the founders drew partially from ancient Rome in creating the constitutional framework of the American government. An analysis of ancient Roman government (Chapter One) and the classical reception of the American founders (Chapter Three) supports this claim. This thesis then argues that a closer look at “impeachment” trials in ancient Rome and America suggests that in these comparable government structures that share a similar purpose, arguments surrounding impeachment of an official also take a similar form.

It is worth noting that the Roman Republic did not have “impeachment” as understood in modern America. In the context of America, impeachment means the charge for wrongdoings in

office against an official resulting from a majority vote in the House of Representatives. An official is not removed from office upon impeachment in American government. Following the impeachment charge, the official could be removed on the basis of a two-thirds vote for conviction in a Senate trial. Ancient Rome did not have a formal process for impeachment, but it did have processes for removal and punishment for wrongdoings committed in office through the removal of a senator, audit of a magistrate, or trial of an official. While there was no separate process for impeachment in ancient Rome, these processes consisted of judging an official and deeming that official worthy of punishment for wrongdoings in office. The process of charging an official and removing an official functioned together in ancient Rome. A senator could be removed by the judgement of a censor and an official could be removed by the decision of a court. Even though ancient Rome did not separate impeachment and removal like America, the Roman Republic still held officials accountable through mechanisms of removal, which offers a valuable point of comparison for impeachment in the ancient and modern day. This thesis will examine the processes of removal for a senator and audit of an official as examples of ancient accountability, in addition to trials of officials, as an ancient “impeachment” trial. In America, an impeachment charge against a President is brought to a trial in the Senate to vote for removal just as in ancient Rome a charge was brought against an official in a court with a jury of senators that would vote for conviction. Since removal was a potential punishment for officials in both of these circumstances, analysis of these trials allows for a comparison of “impeachment” and of the arguments made against officials in both ancient Rome and America. This thesis will employ the word “impeachment” to mean only the charge in the context of American government and liken the trial of an official based on crimes committed in office in ancient Rome to a sort of “impeachment” trial.

This thesis analyzes the arguments made against officials in impeachment trials of ancient Rome and America to draw a connection between ancient and modern government and illustrate how impeachment had a similar function in both governments. There is very little record of impeachment trials of officials in Ancient Rome, but a notable example is the trial of Gaius Verres (Discussed in Chapter Three). This trial by no means represents impeachment in all of ancient Rome, but at least provides evidence of ancient accountability and a presentation of arguments against an official in ancient Rome. The trial of Gaius Verres left a lasting legacy on impeachment, evidenced by its mention in the impeachment trial of President Andrew Johnson. An impeachment manager compared Andrew Johnson to Gaius Verres in trial, which presented the opportunity to connect impeachment trials from ancient Rome and America and examine the arguments against officials in both governments. Looking at the trial of governor Gaius Verres (70 B.C.), the trial record of President Andrew Johnson (1868), and the trial record of President William Clinton (1999), I argue that the prosecutor or impeachment manager of these trials employs similar rhetorical strategies against the official to argue for removal. Gaius Verres, Andrew Johnson, and William Clinton committed widely different acts in different contexts of time, but similar arguments of abuse of power, character, and expectations of office holders are made against them. These similar arguments suggest that two governments separated by 2000 years share a resemblance not only in structure but also in the impeachment and accountability of officials.

Chapter One

The Mixed Government of Ancient Rome

Government form is a crucial aspect of impeachment and accountability. In an empire, there may be no means to remove the emperor outside of assassination. In a republic,

mechanisms can exist to check the executive's power, such as impeachment. Ancient Rome maintained a primitive form of mixed government that valued checks and balances and a version of separation of powers. This form of government facilitated processes of removal and protected against tyranny for a long time. Before understanding what the American founders would later draw from this model in writing the Constitution, it is valuable to understand the ancient Roman template of government in more detail. This chapter examines the structure of government and political ideals within ancient Rome at the time most relevant to the founders.

All discussion in this chapter of the "government of ancient Rome" involves the Roman Republic. Ancient Rome by no means maintained a single structure of government from the beginning to the end of its existence. Rather, the structure of government evolved over time. Most relevant to the founders is the form of government during the Roman Republic from 509 - 49 BC.¹ It is worth acknowledging that Harriet Flower advises against labeling the entire period of 509 - 49 BC as the Roman Republic, for within this period the political system changed in ways such that there was "no single, long republic." Flower identifies six republics within the larger period, each with its own strengths and weaknesses, and urges scholars to recognize the concept of various republics to better discern "the success of some political systems and practices and the failure of others."² The founders, however, were neither highly learned in nor concerned with the ebb and flow of the Roman Republic across time. Rather, they held knowledge of Roman political theory and government on a broader level and were interested in what they could learn generally from the model of government during the Roman Republic, particularly the late Republic. For the purposes of this thesis and in an effort to present the level

¹ Catherine Steel, "Introduction: The Legacy of the Republican Roman Senate," *Classical Receptions Journal* 7, no. 1 (2015): 1.

² Harriet Flower, *Roman Republics* (Woodstock, Oxfordshire: Princeton University, 2010), 33.

of knowledge the founders may have maintained, this chapter combines all smaller republics together to provide the overall idea of government by the late Roman Republic, the time most relevant to the founders. This form of government is set apart from the subsequent form of Imperial Rome (27 BC - 476 AD), which devolved into tyranny and served as an “anti-model” for the founders.³

The Roman Republic

While the government of the Roman Republic involved designated powers, rules, and customs, no single document or set of laws expressed these ideas. In other words, the ancient Romans did not have a written constitution.⁴ Recognizing the absence of a formal document, this chapter will employ the word “constitution” to describe the principles and political culture of ancient Rome, albeit unwritten. Although no constitutional document existed, classical writers such as Polybius and Cicero acknowledge and offer their own interpretations of the Roman constitution. In the sixth book of *Histories*, for example, Polybius explains that the Roman constitution had three elements of divided power: the consuls, the senate, and the people.⁵ Polybius maintained close connections with leaders in ancient Rome that allowed him access to the Roman political system in practice.⁶ As another example, in *De Republica*, Cicero similarly suggests that the Roman constitution, what he terms the *constitutio*, had democratic, aristocratic, and monarchical elements.⁷ So while there was no formal document, there was a general consensus on the structure of divided government maintained throughout the Roman Republic, which would be valuable for future governments to later consider.

³ Catherine Steel, "Introduction: The Legacy of the Republican Roman Senate," Oxford University Press Blog, last modified January 3, 2015.

⁴ Jed W. Atkins, *Roman Political Thought* (Cambridge, UK: Cambridge University, 2018), 4.

⁵ Polybius, *The Histories of Polybius* (n.p.: Loeb Classical Library, 1927), 6.11.11.

⁶ Jed W. Atkins, *Roman Political Thought* (Cambridge, UK: Cambridge University, 2018), 13-14.

⁷ Marcus Tullius Cicero, *The Republic of Cicero*, trans. G.W. Featherstonehaugh (New York, NY, 1829), 2.37.

The constitution of the Roman Republic was grounded in the theory of mixed government, serving as the earliest model of a government to implement such a structure. Most notably expressed by Polybius, the theory of mixed government involves a constitution that assigns approximately equal amounts of power to each order of society.⁸ Jed Atkins explains that mixed government involves divided powers that are interconnected in government, “The powers possessed by any one group, however considerable, require the support of other parts to carry out significant policies.” Within ancient Rome, power was divided between the consuls, the senate, and the people through the assemblies. While ancient Rome had many other government offices, none had a large enough role to deserve its own label as another order of government. Along with separation of powers, the mixed government of ancient Rome maintained checks and balances, as Atkins describes, “Due to the distribution of powers among the consuls, the senate, and people, each governing organ has the ability to cooperate with or obstruct the other.”⁹ This form of government fostered a state of equilibrium where no one branch of government overpowered the other, which served to protect against tyranny. Competition among branches further maintained the constitutional balance, for as Polybius writes, actors in government are fundamentally self-interested and motivated to increase their own power through attempts to encroach on the other actors’ power.¹⁰ In this way, central to mixed government theory are ideas of separation of powers and checks and balances. While mixed government protected the Romans from tyranny for at least 500 years, the Roman government was not void of shortcomings, most significant of which was political corruption. In the third book of *De Legibus*, Cicero argues, “the entire civic community tends to be infected by the passions and

⁸ Polybius, *The Histories*, 6.11.11.

⁹ Atkins, *Roman Political*, 18.

¹⁰ Ibid, 23; Polybius, *The Histories*, 6.11.11.

vices of its leaders.”¹¹ These constitutional ideas of mixed government were not perfect in practice, but as Atkins holds, were a “realistic utopia” of ideals designed to hold the commonwealth together and embody the values of Roman governance.¹²

Rome set an example for a government with separation of powers from the beginning, for no executive power ever operated alone. The legend of Rome’s founding in 753 BC provides that the first Roman leaders rejected the notion that a sole authority would rule the state and purposefully diffused power into separate areas of government. Recognizing the merits of a deliberative body to aid the executive in governmental decisions, Roman legend holds that the first king, Romulus, organized a group of 100 leaders to advise him and share in the service of ruling Rome -- the senate.¹³ The division of power between the king and senate evolved into a division of power between the consuls and senate by 509 BC. Andrew Lintott observes the close relationship between senate and consuls, “The senate, it may be said, without the consuls’ executive power would have been an impressive but ineffective torso.”¹⁴ The two consuls were elected to hold supreme authority over the civil, administrative, and military affairs of Rome, otherwise known as the *imperium*. With the position divided between two people, executive power was further diffused. Each consul had the same authority as the other and could veto each other’s actions. To ensure neither consul dominated the governance of Rome, the consuls alternated authority over the city on a monthly basis and command of Roman legions on a daily basis during battle.¹⁵ The consuls worked with the senate to make governmental decisions by bringing matters for deliberation to the senate.¹⁶ After deliberation, the consuls followed the

¹¹ Ibid, 91-92; *De Legibus* 3.30.

¹² Ibid, 3.

¹³ Gary Forsythe, *A Critical History of Early Rome: From Prehistory to the First Punic War* (Los Angeles, CA: University of California, 2005), 89.

¹⁴ Andrew Lintott, *The Constitution of the Roman Republic* (Oxford: Clarendon Press, 1999), 197.

¹⁵ Forsythe, *A Critical*, 131.

¹⁶ Frank Frost Abbott, *A History and Description of Roman Politics* (Ginn & Company, 1901), 257.

recommendation of the senate, called the *senatus consultum*, which was not a formal law but still a legally binding decree. Frank Frost Abbott contends, “In practice the consul rarely failed to follow the instructions of the senate.”¹⁷ Election from the senate and term limits of only one year held the consuls accountable for their decisions in government. The checks and balances between the consuls and cooperation with the senate protected against a consul dominating government. Thus, from the beginning the Romans were thoughtful about setting up a government such that power could be checked and was never in the hands of only one person or branch.

The authority of government was not only shared between the consuls and senate, but also with the Roman people, who gained power only after a significant time. While ingrained in the Roman constitution is the notion of popular sovereignty and the idea that the people validate the decisions of government, the Roman government was also founded on exclusion. Rome had a class system divided between the patricians (the wealthy) and the plebeians (the common people).¹⁸ Polybius states that the Roman political system was shaped by the general belief that the elite should check the “lawless desires” of the common people, which provided a justification for aristocratic control.¹⁹ For a long time the patricians held all seats of authority and membership in the senate, and the plebeians were excluded from any role in government.²⁰ Roman leaders soon learned, however, they would need the support of plebeians and would struggle to obtain their support as long as the plebeians were excluded from government. In order to place value on popular views and give the plebeians a voice in government, the office of the tribune was created.²¹ The tribunes served as elected spokespersons for the views of the

¹⁷ Ibid, 258; 17.

¹⁸ Forsythe, *A Critical*, 137.

¹⁹ Atkins, *Roman Political*, 22.

²⁰ Forsythe, *A Critical*, 137.

²¹ Lintott, *The Constitution*, 121.

plebeians, and their power was diffused among ten tribunes.²² As defenders of the interests of the Roman *populus*, the tribunes functioned to check the powers of the consuls and senate.²³ Abbott explains how the tribunes fought tyranny, “The tribune was the protector of the helpless individuals against the tyranny of autocratic power.” The tribunes had the power to veto legislation of the senate, which meant the people held great influence over aristocratic government.²⁴ The senate would not be able to pass a decree if any one of the tribunes objected. Lintott contends, “It was understood that, if such a man was elected tribune, he was entitled to associate himself with bills which might damage aristocratic interests and would not have got majority support from the senate, without being regarded as a traitor to his class.”²⁵ Reflecting on this dynamic, Daniel Burgess notes that within the Roman government existed a peculiar situation: Educated men who held high offices would spend hours deliberating in the senate and vote to pass a decree while a tribune, as the representative of the people, could veto and single-handedly prevent the decree from passing.²⁶ The tribunes exercised this power in the form of *intercessio*, which Lintott explains as “the interposing of a tribune’s person in order to block the actions of other magistrates in their public capacity. Apart from the veto of a decree of the senate, this obstruction might affect legislation and the exercise of *imperium* against private individuals.”²⁷ This check on the senate and other areas of government by the representative of the people illustrates that the ancient Romans valued popular representation, and the tribunes helped to fight oppression from the patrician-dominated government. The people also gained greater access to government through assemblies, which had many different functions in

²² Abbott, *A History*, 32.

²³ Atkins, *Roman Political*, 17.

²⁴ Abbott, *A History*, 45-46.

²⁵ Lintott, *The Constitution*, 208.

²⁶ Daniel Burgess, *A Short Account of the Roman Senate, and Manner of Proceedings* (London, UK, 1729), 56.

²⁷ Lintott, *The Constitution*, 124.

government but held only limited power because the senate could override their decisions. Over time, the plebeians gained more access to government after a law passed between 339 and 312 BC granting plebeians eligibility for all political offices. As a result, the number of plebeian senators increased greatly, and plebeians were elected as consul on a regular basis.²⁸ Despite exclusion and a class system, the Roman government provided opportunities for the common people to express their political interests and placed roles in government to facilitate better cooperation between the government and the people. The dynamic between tribune, consul, and senate further illustrates the checks and balances in place within the Roman Republic that protected against tyranny.

Role of the Roman Senate

Within the mixed government of ancient Rome, the role of the senate left perhaps the greatest legacy for the founders to consider as an ancient example of a prestigious group purposed for decision-making in government. While central to the political organization of Rome, the senate holds a considerable degree of ambiguity regarding its exact powers. Especially without a written constitution, the specific powers of the senate are subject to scholarly debate.²⁹ With recognition of ambiguity, scholars have maintained that the role of a deliberative body in Ancient Rome holds a lasting legacy. As Catherine Steel explains, “its continuing importance in the reception of the history of Rome is to be understood in relation to the difficulty in reaching firm conclusions about what it could and could not do.”³⁰ Even without formal powers confirmed in a document, the functions of the Roman senate could be ascertained and considered by future governments.

²⁸ Abbott, *A History*, 47.

²⁹ Steel, "Introduction: The Legacy," 1.

³⁰ Steel, "The Afterlife."

Since no constitution defined the function of the senate or expressed its powers, the notion of *auctoritas* empowered the senate with a place in Roman government, lasting 200 years under a monarchy and 400 years under a republic.³¹ *Auctoritas* is the authority of the senate based on the regard for its members, custom, and precedent. The esteem from *auctoritas* legitimized all of the senate's actions.³² *Auctoritas* enabled the senate's power over the assemblies, for no action of an assembly could become law without approval of the senate.³³ *Auctoritas* enabled the senate's power over all the finances of Rome, for the senate regulated coinage, supervised revenues and expenditures, and controlled the *aerarium*, which was the state treasury. *Auctoritas* enabled the senate's power over foreign policy, for affairs with other nations were deliberated, dictators were chosen, war was waged, and treaties were made and ratified within the senate. Further, *auctoritas* enabled the senate to issue a legally binding decree to the consuls, *senatus consultum*, which was the advice of the senate based on deliberation and voting from a day's session.³⁴ Atkins states that even though the role of the Roman senate in theory was only to advise other members of government, in practice the senate wielded vast authority over a wide range of issues.³⁵ The senate did not have the sole jurisdiction over any particular issue, but through the *senatus consultum*, the senate could guide many governmental decisions by providing the legal basis for executive action. Thus, the senate held considerable influence in Roman government.

The prestige and importance of the Roman senate partially lies in the sort of men who made up the political body. Simply stated, the senate was made up of the best of the best. Men

³¹ Steel, "Introduction: The Legacy," 7.

³² Lintott, *The Constitution*, 86.

³³ Abbott, *A History*, 65.

³⁴ Lintott, *The Constitution*, 196-197; 84.

³⁵ Atkins, *Roman Political*, 13.

were required to possess strong character in order to be eligible for membership in the senate.³⁶ Only esteemed men of Rome could hold membership in the Senate, and any impurity in reputation would prevent a man from becoming a senator.³⁷ Certain occupations prevented men from becoming senators such as an actor or a gladiator, because these occupations held a moral stigma that made a man unfit for dignified office. Even though there was no property requirement for senators during the Republic, only men who were well off served in the senate because no salary was provided for the job. Prior experience in government was essential to become a senator, for holding a lower office, *magistratus maiores*, was a necessary qualification. Along with possessing the wisdom that accompanies experience, there was no age limit, but anyone who was eligible for senator had to be the age required for *quaetorship*, which was around 30 years of age.³⁸ Inexperienced men who were otherwise good candidates had to wait until they had more experience holding positions in government. In addition to these minimum characteristics, money and family lineage influenced who would or would not become a senator. The combination of all of these factors and requirements made the position of senator quite difficult to obtain and ideally ensured that the powers of the senate were entrusted in worthy men. Such an elite office produced the most capable minds to deliberate in government and advise the consuls. Steel suggests that these attributes of the Roman senate signaled great hope for a successful government without a monarchy, “The Republican Senate, as a collection of all that was brightest and most admirable in Rome, could nonetheless serve as a reassurance, to those engaged in overthrowing monarchical systems, of the potential of aristocratic government and its capacity to achieve extraordinary success on an imperial scale without a king.”³⁹

³⁶ Lintott, *The Constitution*, 71.

³⁷ Abbott, *A History*, 71.

³⁸ Ibid, 222-223; 169.

³⁹ Steel, "Introduction: The Legacy," 7.

Once a member of the senate, there were expectations for behavior that all members had to follow. Senators were expected to maintain ideals of virtue and honor in office. Senators who did not live up to these expectations could lose the position. If a senator failed to maintain strong character during the time of membership, and participated in corruption, abuse of punishment, or disregard for constitutional practice, that senator could be removed by the censor (See Chapter Two). Cicero, an esteemed Roman senator himself, explains the additional expectations for senators:

There were three things incumbent upon a senator, “1. That he should be present, for when there is a full house their resolutions are attended with greater weight. 2. That he should speak in his place, i.e. when he is asked. 3. That he should use moderation, and know when to have done; for brevity, when a man is speaking his opinion, is laudable not only in a senator but in an orator; and a long speech ought never to be made but when the senate is going into wrong measures, which most frequently happens when some ambitious design.”⁴⁰

Senators ought to understand the interests of the Roman people, for even though they held their offices for life and were not held accountable by re-election, they were still expected to represent the people in a political system that valued popular sovereignty. Burgess remarks, “It is necessary that a senator be acquainted with the state of the nation, which comprehends a great deal, what number of forces, what is the condition of the treasury, what allies, what friends, what auxiliaries the government has in pay, he ought to know the method of proceedings, and the precedents of former times. All of this requires knowledge, application, and memory, without which a senator can never be furnished as he ought to be.”⁴¹ In this way, a senator was more than a well-esteemed man in Roman society, but a protector of the Roman state.

Another notable aspect of the Roman senate was the deliberative nature of the political body. The Roman senate was the locus of policy-making in government, using deliberation to

⁴⁰ Cicero, *De Legibus*, 3.18.

⁴¹ Burgess, *A Short*, 47.

reach decisions.⁴² Senators gave purposeful speeches regarding a course of action, considering Rome's *utilitas* or interest in an issue.⁴³ Lintott explains the value of discussion in the Roman senate, "In spite of the magistrate's control over the summoning of that body and over its final vote, there was considerable opportunity for free discussion and for the creation of a momentum in the debate which was autonomous and unpredictable."⁴⁴ Abbott describes the emphasis on deliberation in the senate, "The demand of a senator for an opportunity to debate a question would scarcely be disregarded."⁴⁵ With this emphasis on deliberation, the senate had procedures to ensure that all opinions, or at least the most important ones regarding a particular issue, were heard before deciding on an issue.⁴⁶ Different opinions were valued and shared, and the senators would give their opinion in order of rank.⁴⁷ The younger members of the senate took time to listen to others opinions in deliberations before they began to be called on to express their own.⁴⁸ For very important decisions, everyone was required to give their opinion. In less important decisions, only some questions and opinions were shared before voting.⁴⁹ If an issue had several articles, each one would be discussed separately. Sometimes deliberations would become tense over disagreement, but overall the senate maintained a controlled environment, demonstrating the effectiveness of a deliberative body to make the policy decisions in government. The senate took special care to not rush the decision-making process. Within the Roman senate lies the origins of the filibuster. If senators wished to slow down deliberation or hinder an affair, given that the senate would have to conclude meetings at sunset, a senator could delay by speaking at

⁴² Lintott, *The Constitution*, 196.

⁴³ Atkins, *Roman Political*, 115.

⁴⁴ Lintott, *The Constitution*, 196.

⁴⁵ Abbott, *A History*, 228.

⁴⁶ Lintott, *The Constitution*, 74.

⁴⁷ Abbott, *A History*, 228.

⁴⁸ Lintott, *The Constitution*, 74.

⁴⁹ Abbott, *A History*, 227.

long lengths about a topic before offering his opinion. Once opinions were given, the senate voted. Those in favor went to one wall and those opposed went to another. If a majority favored it, the decree would pass. This decision-making process reveals how the Roman senate served as a positive model for future governments of a deliberative body that could effectively slow the process of government and make decisions based on the general interests of the state.

In addition to playing a crucial role in government as a deliberative body, the senate embodied the ideals of the Roman world, some of which carried on to the American government. Senators embodied the notion of honor in holding public office. Since no salary was given for membership, senators contributed their time for the privilege of serving the Roman state.⁵⁰ The aristocratic nature of the senate provided a sense of virtue in office. Jed Atkins discusses the “aristocratic honor code” that emphasized “active, competitive public service as the source for standing and glory and virtue.”⁵¹ Senators were seen as role models and wielded great influence in the community. Flower describes the lasting legacy of a senator, “whose prestige influenced his community during his life and his legacy after his death.”⁵² There was a sense of duty in the Roman senate, for every senator had an obligation to attend all the meetings. If a senator missed a meeting, a legitimate excuse consisted of serving the Roman state through another public office such as magistrate or ambassador.⁵³ Plutarch describes an example of the sense of duty in senate with Marcus Porcius Cato the Younger (95 - 46 BC), “There was no meeting of the senate which he did not attend...whenever the senate was summoned to meet he was the first to give his attendance and the last to withdraw, for he believed a good citizen should be attentive to the

⁵⁰ Abbott, *A History*, 229; 223.

⁵¹ Atkins, *Roman Political*, 76.

⁵² Flower, *Roman Republics*, 134-140.

⁵³ Lintott, *The Constitution*, 74.

public.”⁵⁴ Additionally, the slow and thoughtful process of the senate illuminates the ideals of moderation and temperance. The virtue of *decorum*, which entails limiting or calibrating one’s behavior so as not to cause offense to others, was evident in the respectful discussions of the senate.⁵⁵ It is worth noting that while the men of the senate were thought to embody the Roman ideals, the political body experienced corruption and tension from personal ambition. Steel articulates the duality of the senate in maintaining Roman ideals but also facing strife, “Depending on the period considered, the senate could be seen as a deliberative body whose collective wisdom and experience guided Rome to greatness and whose individual members could be taken as examples of heroic civic virtue; or, conversely, a hotbed of personal ambition and reactionary folly, whose failures led directly to the civil wars of the first century BC from which monarchy emerged.”⁵⁶ Even if the Roman Senate was not perfect, however, the body of government was still crucial to the functioning of government in ancient Rome.

The importance of the senate in ancient Rome is evidenced by the fact that as the senate voluntarily succeeded its powers to dictators and emperors in the imperial period, the Roman Republic began to decline. The “corrupt and failing senate” not only contributed to the rise of Caesar, but also contributed to the loss of separation of powers and checks and balances. For as long as the senate held a prominent spot in government during the Roman Republic, the Roman state avoided tyranny. Steel explains the nuanced legacy of the Roman senate:

The senate embodied a number of paradoxes. It was composed of elected members, who often behaved as though they were a hereditary aristocracy. It was a body charged with offering advice, which often took decisive action. It functioned within a state where the citizen body as a whole was sovereign, yet acted as though it had the capacity to deprive citizens of their rights and status. While claiming to embody the features of the past, it constantly innovated. The very flexibility of the Republican Senate’s role made it, and continues to make it,

⁵⁴ Plutarch, *Plutarch's Lives of Illustrious Men*, trans. John William Langhorne (London, UK, 1878), 2:820.

⁵⁵ Atkins, *Roman Political*, 77.

⁵⁶ Steel, "Introduction: The Legacy," 2.

a powerful instrument with which to explore contemporary possibilities in political organization and government.⁵⁷

Thus the role of the senate and the political system of ancient Rome served as a framework for future governments. The separation of powers and checks and balances within a mixed government allowed for a slow process in government that protected against tyranny. The shared power between consuls, senate, and people created stability in governance. The senate was a notable group of men who functioned as an aristocracy that could restrain popular unrest while representing the interests of the state, serving as a suitable option for decision-making in a government without a monarchy. Advising the executive on a wide range of issues and maintaining many unique powers, the senate proved to be a unique political order that could be adopted later on in another government. From these ideas, the founders could learn from ancient Rome and, in creating a new government, bring back to life the values of mixed government and the vital role of the senate.

As alluded to prior, the ancient Roman government, however, was not perfect. Abuse of power and tyrannical leaders snuck into the system. What happened when, despite checks and balances and separation of powers in government, senators acted dishonorably or officials were ill-fit for their position in government? Impeachment and removal. The following chapter will uncover how the ancient Romans placed further protections against tyranny through impeachment and accountability in their government.

Chapter Two

Impeachment and Accountability in Ancient Rome

Even though the ancient Romans did not have a formal process to impeach public officials, there were mechanisms in place for accountability and removal that set a precedent for

⁵⁷ Ibid, 8.

“impeachment.” Senators could be removed from office through a process of expulsion by the censor. Officials who committed wrongdoings in office could be placed on trial by the Roman senate, which held members of government accountable for their actions through prosecution and the possible punishment of removal from office. These mechanisms served to check the power of officials and maintain the balance of mixed government if members of government threatened the system.

Expulsion from the Roman Senate

Before discussing how senators were removed from office, background is needed regarding how senators were chosen for office. Originally in the Roman Republic, the consuls chose the senators.⁵⁸ During this time, enrollment of the senate was based on personal connections, and thus removal implied nothing other than simple politics or an unfavorable opinion of an individual.⁵⁹ The loss of membership in the senate was not an issue of character or dishonor at this time. Recognizing the lack of fairness in this system of favoritism, the Plebeian Council created the *Plebiscitum Ovinium* (318 BC), an initiative to ensure that men were enrolled in the senate not because of personal favor, but because of true merit.⁶⁰ Following the *Plebiscitum Ovinium*, the censors were entrusted with the task of enrollment and removal of senators. It was at this point that removal became a way to hold senators accountable for their behavior in office. A senator expelled by the censors was termed a *praeteritus*, which means having been passed over.⁶¹ Since censors enrolled senators based on merit, senators were removed because of bad character or misconduct, the *nota censoria*. Lintott explains, “A man

⁵⁸ Abbott, *A History*, 68.

⁵⁹ Lee Christopher Moore, *Ex Senatu Eiecti Sunt: Expulsion from the Senate of the Roman Republic, c. 319-50 BC* (n.p.: University College London, 2013), 11.

⁶⁰ Abbott, *A History*, 46.

⁶¹ Moore, *Ex Senatu*, 21.

became a senator for life, unless he was convicted of a crime for which expulsion was one of the penalties, or the censors held his conduct to have been so disgraceful that a mark (*nota*) was put against his name, and they removed him from the list.”⁶² Censors could summon any senator to a hearing to assess conduct, and if the defendant was condemned, the senator would be expelled from membership.⁶³ Empowered with the authority to remove those unfit for office, the censors were men of the high prestige who defended Roman virtue and character.⁶⁴ Abbott emphasizes that the censor, as the supervisor of the morals of Roman leaders, had “immense political and moral importance.”⁶⁵

Expulsion from the senate served to threaten senators against misbehavior in office. Senators could be expelled for anything that occurred before or during their time in office, which held them accountable for actions from their entire lives. The process of expulsion functioned to remove senators who lacked the Roman values or were unsuitable in any way for leadership in government. Lee Christopher Moore contends that *praeteritus* more often than not deserved removal from office, having acted in a manner unfit for membership. While many *praeteriti* deserved expulsion, some senators were removed for less justified reasons. For example, P. Manilius was expelled from the senate in 184/183 BC by Cato the Elder because he “embraced his wife in front of his daughter.”⁶⁶ Thus, ambiguity surrounded expulsion, for there was no single standard that when violated would lead to removal. Not all wrongdoers were removed from the senate, and not all of those removed did wrong. Even if a senator maintained good morals and conducted himself properly, he was not immune from possible removal from the

⁶² Lintott, *The Constitution*, 72.

⁶³ Moore, *Ex Senatu*, 92.

⁶⁴ Lintott, *The Constitution*, 120.

⁶⁵ Abbott, *A History*, 72.

⁶⁶ Moore, *Ex Senatu*, 3; 210.

senate. Censors could remove a senator without demonstrating any proof of misconduct, and removal could be on the basis of rumor without further investigation. Expulsion through the *nota censoria* not only punished the senator who was removed but also his family or those associated with him. Moore suggests that just as the motives for expulsion are not always clear from the censors, sometimes the target of the censure could extend beyond the person removed.⁶⁷ Censors varied in their level of severity towards senators or proclivity to remove senators, which functioned to make expulsion even more unpredictable. The unpredictable nature of expulsion worked to instill fear in the senators and encourage proper behavior in office.

Expulsion served as a powerful mechanism for accountability because the consequence for senators was more than the loss of a position, but also the loss of honor, which was devastating in Roman society. Jon Lendon states that the legal status of senator was one of the many elements that elicited the community recognition of honor.⁶⁸ Within Roman society existed a constant competition for status and honor. This competition for honor, as Lendon explains, “might subsume all other competitions, and become overwhelmingly important to its participants.”⁶⁹ Members of the aristocratic class in ancient Rome strove to preserve and enhance their honor in relation to others. Honor shaped the identities of individuals in Roman society. Vittorio Nicholas Galasso describes the intrinsic link between honor and identity in Roman society and the severe consequences for officials following the loss of honor:

Honor was fundamental because it served as the primary element constituting an individual’s identity. The mechanism through which persons acquired their identity was the community’s recognition of their honor...Statesmen were expected to behave as moral pillars in the eyes of the community. In the minds of the Roman elite, positions of power reflected the degree of honor its holder possessed. If a leader defiled his personal identity, by failing to live up to the standards expected by the community, he was no longer seen as legitimate.

⁶⁷ Ibid 76; 92; 127.

⁶⁸ Jon E. Lendon, *Empire of Honour* (New York, NY: Oxford University Press, 1997), 36.

⁶⁹ Ibid, 34.

Suicide was a common and perfectly acceptable act if one disgraced their honor, as it was a last vestige for its rescue.⁷⁰

While honor was a personal quality, it also extended to one's household and connections to others, so the loss of honor would taint more than the *praeteritus* himself.⁷¹ Thus in a society that placed importance on honor, the loss of honor and reputation heightened the consequences of removal.

Following the loss of honor from expulsion, *praeteritii* were disgraced and faced public humiliation, which destroyed their future prospects in society. A condemnation by the censors marked an individual forever for possessing poor character. Accius claims that the censors' condemnations of character were similar to judicial rulings in the courts, where those who were condemned were deemed to *infamia*, the loss of legal or social standing.⁷² Lintott similarly suggests that the loss of status from the moral censure exercised by the censors was an "extraordinary, and arbitrary, supplement to the jurisdiction of the courts."⁷³ Moore cautions, however, that since the censors' judgments were based on rumor and their individual opinion, these condemnations did not hold the same weight as a judgment from the court.⁷⁴ Nevertheless, expulsion carried with it a sense of humiliation for the senators and those associated with him, which undoubtedly deterred conduct. Upon expulsion, the reasons for removal would enter the public domain.⁷⁵ The spotlight of a position in the senate and public nature of office yielded a large audience for the disgrace and humiliation following expulsion from the senate, which worsened the situation for *praeteritii*. Senators understood that at any moment they could lose

⁷⁰ Vittorio Nicholas Galasso, "Honor and The Performance of Roman State Identity," *Foreign Policy Analysis* 8 (2012): 179-180.

⁷¹ Lendon, *Empire of Honour*, 45.

⁷² Moore, *Ex Senatu*, 77; 142.

⁷³ Lintott, *The Constitution*, 119.

⁷⁴ Moore, *Ex Senatu*, 142.

⁷⁵ Moore, *Ex Senatu*, 77.

their reputation and be publicly disgraced through expulsion, which served as an ongoing psychological threat. Moore explains the psychological situation surrounding possible expulsion among senators:

Each potential *praeteritus* was aware of generalities in the behavior of past censors, unable to foretell the behavior of future censors, aware that anything might draw their *opprobrium*, aware that if expelled his humiliation would be announced in public and without fore-warning and that all of his peers and a large proportion of the wider populace would get to know of it, and aware that no mechanism existed whereby he could appeal or swiftly reverse such a punishment.⁷⁶

While the threat of removal was always present, there were limits to the frequency in which censors could remove senators. The censors did not act alone in their decisions, for censors checked each other's judgments and had to agree before a senator was removed or before a senator could be enrolled.⁷⁷ Since the censors were popularly elected and were motivated by how the public viewed their actions in office, public approval functioned as a restraint.⁷⁸ The Roman people favored moderate censors rather than harsh censors, so censors were limited in exercising the power to expel senators.⁷⁹ While the censors were free to expel in a partisan manner or out of personal interest, they were expected to limit biased removals in order to maintain the legitimacy of censorship.⁸⁰ In order to protect against overly prejudiced censors or abuse of power, the censors performed an oath stating that they would not be prejudiced. The oath bound censors to produce the name and punishment of the person censored, which limited unnecessary removals.⁸¹ The precedent of past censors also functioned as a restraint on expulsion, as no censor wanted to deviate too far from the tradition regarding the number of, or

⁷⁶ Lendon, *Empire of Honour*, 39; 76-77.

⁷⁷ Lintott, *The Constitution*, 116.

⁷⁸ Nico P. Swartz, "The Censor in the Late Republican Empire and His Meaning for Modern Democracy," *Journal Politics and Law* 3, no. 1 (2010): 110.

⁷⁹ Moore, *Ex Senatu*, 132.

⁸⁰ *Ibid*, 182-183.

⁸¹ Swartz, "The Censor," 111.

reasons for, removal. The censors were not expected to remove every single senator who acted poorly, but to provide exemplary punishments so that expulsion would teach a lesson to other members of the senate.⁸²

The actual frequency of expulsion and its effect on behavior in the senate has been debated among scholars. Claude Nicolet suggests that only 2-3 members were removed per year, which would not have had a large effect on the senate given its number of members.⁸³ Hopkins and Burton claim that with approximately 1.2 expulsions per year, the number of expulsions was not significant but the threat was, which they argue impacted the behavior of senators.⁸⁴ Astin states that expulsion was not a major phenomenon, and any estimate of the frequency cannot reveal how expulsion impacted behavior or was perceived by the senators.⁸⁵ Taking into consideration the conclusions of these scholars, Moore attempts a more thorough approach to uncover the frequency and impact of expulsion, finding that the mathematical risk of expulsion was about 10%, and expulsion was an effective normative tool to address misconduct.⁸⁶ Regardless of its actual impact, this process of removal, as a mechanism of accountability in the most extreme form, set a precedent for an “impeachment.” The ancient Romans demonstrated that in order to protect the interests of the state, senators who were unfit for office could be judged worthy of removal.

The Judicial Authority of the Roman Senate

Another important way that Roman officials were held accountable for their actions was through investigative and judicial processes in the senate. The senate had the authority to hold

⁸² Moore, *Ex Senatu*, 105; 132.

⁸³ Claude Nicolet, *La Tarda Repubblica e il Principato*, vol. II, *Storia Della Società Italiana* (Milan, 1983), 51.

⁸⁴ Keith Hopkins and Graham Burton, *Political Succession in the Late Republic (249-50 BC)* (n.p.: Cambridge, 1983), 75.

⁸⁵ Alan E. Astin, *Livy's Report of the Lectio Senatus and the Recognitio Equitum in the Censorship of 169-8 BC* (n.p.: Historia, 1988), 14-34.

⁸⁶ Moore, *Ex Senatu*, 52.

officials accountable through an audit empowered by the Roman *lex repetundarum*, a law created “to redress the wrongs which provincials suffered at the hands of Roman officers and governors.” The *lex repetundarum* provided recovery procedures “to secure the conviction of the guilty and the effective compensation of the injured.”⁸⁷ Upon leaving office, accounts of quaestors and magistrates would be sent to the senate to be reviewed and authenticated. This audit process was another way for the senate to check the power of other officials and protect against misconduct in office. Since officials were not subject to review until after their term ended, the audit held magistrates accountable for their actions only after leaving office. Regardless, to some extent the process of an audit would have checked the power of Roman officials.⁸⁸

Along with holding officials accountable through an audit, the senate held officials accountable through a trial, which serves as the most similar comparison from ancient Rome to an impeachment trial. As mentioned in Chapter One, the senate maintained a judicial authority to conduct trials for officials who committed public crimes or serious offenses, especially those regarding politics.⁸⁹ David Bederman likens this judicial authority of the Roman senate to conduct trials for public officials to that of the power for impeachment trials in the American senate.⁹⁰ Cases for these officials could be tried before a *quaestio* or before the senate in the court system. The senators conducted a trial in a manner similar to that of the courts. The consul presided over the trial and the verdict was given as a *senatus consultum*, a decree of the senate. Senators had the privilege to appeal their decision back to the senate, even though common

⁸⁷ Peter W. Wolnizer, *Auditing as Independent Authentication* (Sydney: Sydney University Press, 1987), 42; A. N. Sherwin-White, "The Date of the Lex Repetundarum and Its Consequences," *The Journal of Roman Studies* 62 (1972): 85.

⁸⁸ Wolnizer, *Auditing as Independent*, 42; 195.

⁸⁹ Frank Frost Abbott, *A History and Description of Roman Politics* (Ginn & Company, 1901), 386.

⁹⁰ David Bederman, *The Classical Foundations of the American Constitution* (New York, NY: Cambridge, 2008), 143.

citizens had no ability to appeal their cases.⁹¹ The court system worked to convict officials for wrongdoings in office to ensure accountability for all members of government.

The court system, with senators serving as jury members in criminal trials, often facilitated lasting political consequences in ancient Rome. Michael Alexander suggests that politics were deeply connected to judicial activity, and trials frequently presented political considerations.⁹² Alexander examined the political nature of trials in ancient Rome, “A trial could be ‘political’ in the sense that the prosecutor’s motive was to harm a political enemy or ‘political’ in the sense that it had political consequences: the expulsion of a significant politician from Roman life.” A criminal trial could function to remove an official from a government position through prosecution. Alexander examined the frequency of prosecution among Roman officials by questioning exactly how often Roman senators in the late republic were put on trial. Scholars have debated this question and come to contradicting conclusions. Lily Ross Taylor concluded that a Roman senator was very likely to be brought to trial, with “unending prosecutions brought from political motives by his personal enemies.” In contrast, Peter Brunt found that senators were not facing frequent prosecutions, and many were not even prosecuted once. A.E. Astin offers that, at least between the years 200-134 BC, prosecutions indeed were brought against senators, but it would be impossible to know for certain if politics motivated the trial.⁹³ Alexander concludes that trials of senators occurred frequently enough to encourage senators to “follow the law or at least appear to do so” but were not so common that every senator would face prosecution.⁹⁴ Just as the threat of expulsion by censors presented a

⁹¹ Abbott, *A History*, 386.

⁹² Michael C. Alexander, "How Many Roman Senators Were Ever Prosecuted? The Evidence From the Late Republic," *Phoenix* 47, no. 3 (1993): 239-240.

⁹³ *Ibid*, 238; 239; 242.

⁹⁴ *Ibid*, 255.

psychological deterrence, so too did the notion of a prosecution in trial. The threat of prosecution alone functioned to deter members of Roman government from misconduct, and if misconduct was not deterred, an actual prosecution could punish officials for their wrongdoings. Thus trials, often conducted by the senate, held public officials accountable for their actions not only through the possibility of a trial, but also with the potential punishment of being removed from office.

This chapter examined the ways in which officials were held accountable for their actions in ancient Rome. The Romans recognized that mechanisms for removal were important to ensure stability in government and protect against tyranny. Removal of a senator by the censor, audit of magistrates, and trials in the court system all make up the precedent the ancient Romans established for a sort of “impeachment” in future governments. For the purposes of this thesis, the most important mechanism for removal of these examples is the criminal trial of an official, which shares a resemblance to an impeachment trial in America. The following chapter will look deeper into the story of an ancient Roman “impeachment” to illustrate the function of accountability in ancient Rome and the possible arguments against an official in the Roman Republic.

Chapter Three

The Trial of Gaius Verres

The most prominent trial of a public official in the Roman Republic is that of Gaius Verres, governor of Sicily, whose laundry list of misdeeds led him to be prosecuted in the *quaestio de repetundis*, the Roman extortion court. Speeches from this trial are the only extant information from ancient Rome of the prosecution of an official for crimes committed in office. Lintott explains how the *quaestio* served to hold officials accountable, “The *quaestio de repetundis* was established to compensate people for unjust exactions by Roman magistrates and

pro-magistrates.”⁹⁵ In the *quaestio de repetundis*, the jury was comprised of senators presided over by a *praetor*, resembling an American impeachment trial with senators presided over by the Chief Justice.⁹⁶ If convicted in this court, officials faced exile and the payment of up to 250% of the amount they extorted. Verres serves as an example of the sort of ancient Roman official who would be seen as a threat to the republic and whom the senate would seek to hold accountable. Scholars consider Verres’ trial an ancient “impeachment” because Verres was punished for crimes related to his duties in office that he committed during his time as governor.⁹⁷

Before examining the trial of Gaius Verres, a presentation of the person and story behind this ancient impeachment is necessary. As with all attempts to illustrate Gaius Verres, it is important to acknowledge that the only primary evidence of Verres comes from the seven speeches made against him by the prosecutor of his trial, Marcus Tullius Cicero. By no means could this source present an unbiased and wholly accurate narrative, but it is at least the story presented to the jury of the trial. While Cicero’s arguments do not provide a linear story of Verres’ life, Frank Hewitt Cowles and Douglas O. Linder created a chronological narrative of the events of Verres’ life from the information provided by Cicero. Based on this chronological narrative, the following account is a what we know about Gaius Verres and his time in government, which provides an example of an official who would be deemed unfit for office in the court system of ancient Rome.

A Brief Account of Gaius Verres

From his first moments as a leader in government, Gaius Verres took advantage of his position and sought ways to benefit himself at the cost of the state. In 84 B.C. Verres took the

⁹⁵ Lintott, *The Constitution*, 148.

⁹⁶ John E. Atkinson, "Cicero and the Trial of Verres," *Akroterion* 37, nos. 3-4 (January 1992): 92.

⁹⁷ *The Impeachments of Verres and Hastings: Cicero and Burke* H.V. Canter (1914).

office of *quaestor* and began his pursuit of extortion. From the 2,235,417 sesterces allotted to him from the state treasury for the purposes of managing the army, Verres spent only 1,635,417 sesterces on the army. To make up the difference, Verres left a note saying “I left at Ariminum 600,000 sesterces.” As one can imagine, the money was not left at Ariminum. Ariminum had been plundered. The *quaestores aerarii*, P. Lentulus Sura and L. Valerius Triarius learned of this suspicious behavior and began an investigation, the outcome of which was inconclusive. Verres additionally found ways to benefit himself through the deaths of Roman citizens, seizing their estates after they died and taking whatever he saw fit. Verres often used violence to obtain money. For example, when Verres demanded money from a magistrate and was denied, he started a fire to torture the magistrate with smoke.⁹⁸

After serving as *quaestor* and embezzling hundreds of thousands of sesterces until 82 B.C., Verres became the *legatus* for Cornelius Dolabella, a notable plunderer. During this time, Verres relied on the power and access from his position to seize art and women at his will. He stripped temples of their pictures and statues.⁹⁹ Considering himself a connoisseur of art, Verres confiscated every painting, plate, jewel, and tapestry he wanted. On trips, Verres asked his assistants to find any women “worthy” of him staying longer, despite the fact that he had a wife and children.¹⁰⁰ Verres worked closely with Dolabella, who helped him cover up his crimes. Cowles explains, “so closely associated had their operations been that it would probably have been extremely difficult to differentiate the guilt of the one from that of the other.” Their cover-ups, however, were imperfect, and Dolabella was inevitably convicted and exiled, which foreshadowed the fate of Verres.

⁹⁸ Frank Hewitt Kowles, *Gaius Verres: An Historical Study* (n.p., 1917), 5-7.

⁹⁹ Douglas O. Linder, *The Trial of Gaius Verres: An Account* (n.p., 2008).

¹⁰⁰ Cowles, *Gaius Verres*, 94; 9.

Verres won the election for *praetor*, having paid 300,000 sesterces for votes and having bribed the electors. This praetorship allowed Verres jurisdiction over all civil litigation arising between citizens, another position of power he could abuse. Verres sought ways to earn more money, accepting bribes in exchange for court decisions.¹⁰¹ Verres manipulated wills and inheritance laws, amassing even more wealth for himself at the cost of regular citizens.¹⁰² Cowles provides that from this praetorship, “Not every instance is recorded, but enough shows the character of Verres’ administration of office and demonstrates what an altogether complete preparation it furnished for the three years’ exploitation of the rich province whither he next turned his course.”¹⁰³ The rich province aforementioned is Sicily, one that enjoyed peace and prosperity until Verres became governor.

Verres was chosen among the *praetors* for the position of governor in Sicily. In 73 B.C. he rushed to Messana and immediately began planning possible crimes in the province and ways that he could make a profit. Verres extended his term from one to three years and assumed a tyrannical nature as governor.¹⁰⁴ Douglas O. Linder asserts that, during these three years, Verres “violated the public trust in just about every way it can be violated.”¹⁰⁵ Verres appointed judges that he could threaten and command, which allowed him to assume total control over the court system and indirectly influence decrees of provincial senates.¹⁰⁶ With control over subservient judges, Verres obtained rulings through bribes and confiscated estates for himself. Sometimes Verres would take money from both parties and award the ruling to the higher sum.¹⁰⁷ This judicial control was especially threatening to the state as Verres saw himself above any law and

¹⁰¹ Ibid, 14; 15; 16.

¹⁰² Linder, *The Trial*.

¹⁰³ Cowles, *Gaius Verres*, 26.

¹⁰⁴ Ibid, 32; 57.

¹⁰⁵ Linder, *The Trial*.

¹⁰⁶ Cowles, *Gaius Verres*, 34.

¹⁰⁷ Linder, *The Trial*.

eroded precedent.¹⁰⁸ In terms of agricultural taxes, Verres ended the traditional system of proportional taxation and allowed tax collectors to set whatever price they deemed right, bringing more money to Verres and his followers at the expense of farmers. Linder explains the severe consequences of this action, “Farmers considered themselves lucky if they were not forced to pay more than three times the tax for which they were legally liable under the former regime.”¹⁰⁹ Verres put a price on anything over which he had power. He sold judicial decisions, decrees, proclamations of edicts, public offices, and even seats in the senate. These sales often had lasting negative impacts in Sicily’s government. For example, when Verres auctioned off the office of censor and provided a spot in office for more corrupt officials, the censors looked to manipulate the census to advantage themselves, and the census was thus an unusable and unfair basis for the taxation of Roman citizens. Additionally, Verres continued to seize every work of art he wanted from both private individuals and public property. When Verres did not get his way, he resorted to violence and torture, sometimes resulting in the death of Roman citizens. With all of these instances as evidence, Verres would deservedly end up in the extortion court, charged with what Cowles describes as, the “systematic and ruthless spoliation of the province for the past three years.”¹¹⁰

Background of the Trial

The Roman court system functioned to hold officials like Verres accountable for crimes committed in office. Once Verres left his position as governor of Sicily in 71 B.C., Sicilians began filing complaints against the governor pursuant to their right to take action against public officials for extortion. Complaints arose from all major cities in Sicily, excluding Verres’ city of

¹⁰⁸ Cowles, *Gaius Verres*, 34.

¹⁰⁹ Linder, *The Trial*.

¹¹⁰ Cowles, *Gaius Verres*, 74; 27.

residence and the location for his plunder.¹¹¹ The Sicilians approached Marcus Tullius Cicero as their advocate, who applied to be the prosecutor of Verres in 70 B.C.¹¹² Verres attempted to arrange for his ally, Q. Caecilius Niger, to act as prosecutor in the trial.¹¹³ The choice for prosecutor was determined in a proceeding called the *divinatio*, which functioned to protect against collusion between the prosecutor and the accused.¹¹⁴ In the *divinatio*, Cicero gave a speech emphasizing the magnitude of Verres' case and urging that he was the only person able to ensure justice.¹¹⁵ Cicero cited his superior educational background and asserted that unlike Niger, he had no conflict of interest and would earnestly fight on behalf of the Sicilians to use the testimony of witnesses and expose the many ways Verres had victimized Sicily.¹¹⁶ Cicero defeated Niger in the *divinatio*, and moved to formally charge Verres with the extortion of forty million sesterces with a penalty of one hundred million sesterces, the maximum punishment allowed.¹¹⁷ Of the 110 days Cicero was provided to prepare his case against Verres, he used only fifty days to build a strong case. Cicero travelled across major cities and small villages in Sicily to interview Verres' victims and gather evidence from public records to present at the trial.

This trial held significance not only for Verres as an individual, but also for the political arena at large. For Verres himself, the public trial would be humiliating. Not only would conviction lead to the loss of senate membership and total removal of judicial capacities, but also Cicero's speeches in the trial, as Thomas D. Frazel explains, "brought degradation from the courtroom to the world, for all time." Frazel describes the impact of Cicero's speeches on Verres' reputation, "A key element of Cicero's depiction of Verres, I argue, is the claim that this

¹¹¹ Linder, *The Trial*.

¹¹² Atkinson, "Cicero and the Trial," 92.

¹¹³ Linder, *The Trial*.

¹¹⁴ Atkinson, "Cicero and the Trial," 92.

¹¹⁵ Thomas D. Frazel, *The Rhetoric of Cicero's 'In Verrem'* (Göttingen: Vandenhoeck & Ruprecht, 2009), 35.

¹¹⁶ Linder, *The Trial*.

¹¹⁷ Atkinson, "Cicero and the Trial," 92.

oratio really and truly attacks Verres' *existimatio*, his standing within the community of Roman citizens. The rhetoric, then, does nothing less than mirror the actual loss of political rights and the actual loss of face that conviction brought Verres."¹¹⁸ The arguments Cicero made against Verres in court would damage his reputation, which emphasizes the sense of shame surrounding a charge in court within ancient Rome. As for the political arena at large, the trial involved a broader question regarding prospects for oligarchic administration and corruption in Rome.¹¹⁹ The consuls at the time, Pompey and Crassus, had risen to power through questionable means and decided to support the prosecution of Verres in order to publicly champion "clean government" and protect against oppression and abuse in government.¹²⁰ Kit Morrell sets forth that these leaders "sought to realize an ideal of ethical imperialism in the interests of both Rome and the provinces." Morrell explains that Pompey backed the prosecution of Verres as part of a broader program for reform in the provinces that involved, "a call for stricter trials, starting with the show trial of C. Verres; and the promotion of better standards of provincial governance."¹²¹ The trial served as a warning to public officials, and Verres was made an example for other members of government in ancient Rome. Howard Vernon Canter describes the larger context for Verres' trial, "Doubtless Verres differed less from the average Roman governor in his acts than in the fate which overtook him, but his prosecution revealed as never before the frightful iniquities of Rome's system, and if it wrought no immediate improvement, it marked at least the dawning of a better day for the provincials."¹²² Cowles explains, "Verres had been only a type. He had stood for the whole corrupt system. It was for more than the condemnation of one man

¹¹⁸ Frazel, *The Rhetoric*, 223.

¹¹⁹ Howard Vernon Canter, "The Impeachments of Verres and Hastings: Cicero and Burke," *The Classical Journal* 9, no. 5 (February 1914): 204.

¹²⁰ Atkinson, "Cicero and the Trial," 95.

¹²¹ Kit Morrell, *Pompey, Cato, and the Governance of the Roman Empire* (Oxford, United Kingdom: Oxford University Press, 2017), 8; 19.

¹²² Canter, "The Impeachments," 204.

that the orator had striven.”¹²³ The trial provided an opportunity of redress for all of the Roman and Sicilian citizens victimized by Verres and the chance to set an example for future conduct in office. In this way, the trial embodies the nuanced ways that a charge against an official facilitated accountability--not only would the trial bring possible punishment, but also humiliation for Verres, setting a precedent for better behavior in future leaders.

The trial involved two stages, the *actio prima* and the *actio secunda*. In the *actio prima*, Cicero presented his introductory argument against Verres in front of a large audience.¹²⁴ Canter describes the public scene of the trial, “A mingled throng doubtless attended the trial, everybody high or low, rich or poor, had entrance if he wished. The roofs of the adjoining buildings on such occasions were filled with the curious, with their outbursts of approval or disapproval.”¹²⁵ For nine days Sicilians took the stand, but within three days Verres had stopped attending, well before the *actio secunda*.¹²⁶ In order to put on record the evidence Cicero had painstakingly gathered to expose Verres’ misconduct, Cicero published the five speeches he planned to deliver against Verres in the *actio secunda*. In addition to the five speeches planned for the *actio secunda*, Cicero included the argument he delivered in the *actio prima* in this publication.¹²⁷ Through the publication of these speeches, titled *In Verrem*, Verres’s name was “forever associated with extortion and misgovernment.”¹²⁸ From these speeches, we can determine the formal charges of Verres and analyze Cicero’s arguments for the impeachment of the governor. Cicero presented the formal charge against Verres as such:

We say that Gaius Verres has not only done many licentious acts, many cruel ones, towards Roman citizens, and towards some of the allies, many wicked acts against both gods and men; but especially that he has taken away four

¹²³ Cowles, *Gaius Verres*.

¹²⁴ Atkinson, "Cicero and the Trial," 92.

¹²⁵ Canter, "The Impeachments," 202.

¹²⁶ Linder, *The Trial*.

¹²⁷ Frazel, *The Rhetoric*, 318.

¹²⁸ Marcus Tullius Cicero, *Oratio In C. Verrem Actio Prima*, trans. James B. Greenough (Boston, MA, 1902).

hundred thousand sesterces out of Sicily contrary to the laws. We will make this so plain to you by witnesses, by private documents, and by public records that you shall decide that, even if we had abundant space and leisure days for making a long speech without any inconvenience, still there was no need at all of a long speech in this matter (Act. Prim. 18.56).¹²⁹

Cicero's speeches provide an example of the arguments made against an official in ancient Rome. Surrounding the charge of extortion, three broader issues encompass Cicero's argument for the prosecution of Verres, which sheds light on the standard to which officials were held in ancient Rome and the point at which officials violated expectations of behavior in office. In addition to the formal charge, the larger issues of abuse of power, poor character, and the lack of integrity expected in an office holder all provided a strong basis for Verres' impeachment in the context of ancient Rome. Since the Roman Republic was designed to protect against tyranny, a tyrannical leader was not wanted in government. Since ancient Rome valued strong character in officials, poor character in a leader was also undesirable. And since offices of Roman government had a sense of prestige and duty, functioning as role models for Roman citizens, the failure to live up to those expectations of offices was a major offense. Cicero employed the rhetorical strategy of highlighting these three issues to convince the jury of senators that Verres deserved punishment and exile, understanding that emphasizing these issues would spark even more disfavor towards Verres among the jury of senators.

Issue of Tyrannical Nature and Abuse of Power

In a world where the mixed-government of ancient Rome was established to protect against tyranny, officials who abused their power and acted like a tyrant were detrimental to the liberty of citizens and easily met the grounds for impeachment. A major aspect of Cicero's

¹²⁹ *dicimus C. Verrem, cum multa libidinoſe, multa crudeliter, in civis Romanos atque in socios, multa in deos hominesque nefarie fecerit tum praeterea quadringentiens ſeſtertium ex Sicilia contra leges abſtulisse. Hoc teſtibus, hoc tabulis privatis publicisque auctoritatibus ita vobis planum faciemus, ut hoc ſtatuat, etiam ſi ſpatium ad dicendum noſtro commodo, vacuoſque dieſ habuiſſemus, tamen oratione longa nihil opus fuiſſe*

argument for Verres' prosecution was that Verres was a tyrant who threatened the Roman Republic. Atkinson describes the tyrannical nature of Verres' governorship, "Verres as governor had power, and the force to get his own way, since Sicily, like any province, was effectively under martial law."¹³⁰ Frazel explains that Cicero used the theme of a tyrant as the antithesis to the law and freedom, which "makes the reader personally care about Verres' crimes in ways that a simple accusation of cruelty never could."¹³¹ In highlighting Verres' broad control over the judicial system, manipulation of decrees, and massive plundering, Cicero made a great effort to present Verres as a tyrant and abuser of power to bolster the charge of extortion.

Cicero emphasized how Verres acted as a tyrant over the entire judicial system, wielding total control over court decisions and the appointment of judges: "The judicial proceedings conducted, and of the decisions given by that man; and as his exploits of that class are countless" (Act. Sec. 2.118).¹³² Cicero highlighted how Verres "appointed judges who were agreeable to himself" in order to assume control over the court system.¹³³ By noting that Verres would sometimes take money from both parties and award the ruling to the higher sum, Cicero showed that Verres was not even fair with his bribes, "A wicked action to take money to influence a decision in a court of law; how much more wicked...to condemn a man from whom you have taken money to acquit him" (Act. Sec. 2.78).¹³⁴ Through these statements, Cicero illustrated how Verres' abusive judicial control was harmful to the state, especially because Verres took a tyrannical approach.

¹³⁰ Atkinson, "Cicero and the Trial," 93.

¹³¹ Frazel, *The Rhetoric*, 158.

¹³² *atque ut aliquando de rebus ab isto cognitiss iudicatisque et de iudiciis datis dicere desistamus, et, quoniam facta istius in his generibus infinita sunt, nos modum aliquem et finem orationi nostrae criminibusque faciamus, pauca ex aliis generibus sumemus*

¹³³ Cowles, *Gaius Verres*, 34.

¹³⁴ *quod mihi omnium rerum turpissimum maximeque nefarium videtur, ob rem iudicandam pecuniam accipere, pretio habere addictam fidem et religionem, quanto illud flagitiosius improbius indignius, eum a quo pecuniam obabsolvendum acceperis condemnare*

Cicero showed that in addition to acting as a tyrant over the entire judicial system, Verres acted as a tyrant through his abuse of issuing decrees, auctioning positions in government, and manipulating inheritance wills--all for his own profit. Cicero depicted the extent of Verres' control, "Every accuser, every informer, he had in his power; if he wished to cause trouble to anyone, he did it without any difficulty. All Verres' decrees, and commands, and letters, he sold in the most skillful and cunning manner"¹³⁵ (Act. Sec. 2.135). With respect to the abuse of decrees, Cicero asserted, "I can produce six hundred decrees in which, even if I were not to allege that money had interrupted justice, still the unprecedented and iniquitous nature of the decrees themselves would prove it"¹³⁶ (Act. Sec. 2.125). Cicero discussed how Verres provided a spot for more corrupt officials by auctioning off seats in government. Cicero argued, "No one could be made a senator while he was praetor except those who had given him money."¹³⁷ (Act. Sec. 2.125). Regarding inheritance wills, Cicero explained how Verres took what he wanted from the estates left behind, which completely disregarded the "right, custom, equity, the edicts of all his predecessors" (Act. Sec. 1.116).¹³⁸ Cicero stated that Verres' abuse of power also ruined the agricultural market, "You know that over the whole of Sicily the allotments of land are deserted and abandoned" (Act. Sec. 3.120).¹³⁹ No farmer escaped Verres' abuse, "Out of all that numerous band of cultivators, there is not one from whom money has not been exacted" (Act. Sec. 3.224).¹⁴⁰ Cicero articulated that this tyrannical behavior over so many aspects of

¹³⁵ *accusatorum et quadruplatorum quicquid erat, habebat in potestate; quod cuique negoti conflare volebat, nullolabore faciebat; istius omnia decreta imperia litteras peritissime et callidissime venditabat*

¹³⁶ *possum sescenta decreta proferre in quibus, ut ego nondicam, pecuniam intercessisse ipsa decretorum novitasiniquitasque declarat*

¹³⁷ *omnia, neminem isto praetore senatorem fieripotuisse nisi qui isti pecuniam dedisset*

¹³⁸ *ius, consuetudinem, aequitatem, edicta omnium neglegit.*

¹³⁹ *quod ager decumanus provinciae Siciliae propter istius avaritiam desertus est. nequeid solum accidit uti minus multis iugis ararent, si qui in agris remanserunt, sed etiam ut permulti locupletes homines, magni et navi aratores, agros latos ac fertiles desererent totasque arationes derelinquerent*

¹⁴⁰ *urgetur a tota Sicilia; nemo est ex tanto numero aratorum a quo pecunia cellae nomine non sit exacta*

governance came at the expense of the Sicilians, “While this man was praetor the Sicilians enjoyed neither their own laws, nor the decrees of our senate, nor the common rights of every nation. Everyone in Sicily has only so much left as either escaped the notice or was disregarded by the satiety of that most avaricious and licentious man” (Act. Prim. 4.13.).¹⁴¹

Cicero also exposed Verres’ tyrannical nature by explaining how Verres plundered everything he desired. Cicero urged the senate, “It is not doubtful to any one of you that Gaius Verres most openly plundered everything in Sicily, whether sacred or profane, whether private or public property” (Act. Sec. 5.1).¹⁴² Cicero emphasized Verres’ entitlement, for there was nothing in Sicily that Verres “did not inspect, that, if he liked it, he did not take away” (Act. Sec. 4.1).¹⁴³ Cicero highlighted Verres’ use of force to exact plunder, “It is so evident you cannot deny it, that no statue was given to you with the goodwill of anyone; no money on account of statues, that was not squeezed out and extorted by force” (Act. Sec. 2.165).¹⁴⁴ What Verres took from the Sicilians, he kept for himself. Cicero said, “The things which you carried off from the holiest temples with wickedness, and like a robber, we cannot see, except in your own houses, or in those of your friends” (Act. Sec. 1.57).¹⁴⁵ In this way, Cicero shed light on the selfishness and greed of the governor, which he fulfilled through abusing his power.

Cicero made many points to suggest that such abuse of power from Verres posed a threat to the entire state of Rome. Frazel explains the severity of Verres’ crimes, “Wrongs of the kind

¹⁴¹ *hoc praetore, Siculi neque suas leges, neque nostra senatus-consulta, neque communia iura tenuerunt. Tantum quisque habet in Sicilia, quantum hominis avarissimi et libidinosissimi aut imprudentiam subterfugit, aut satietati superfuit*

¹⁴² *nemini video dubium esse, iudices, quin apertissime C. Verres in Sicilia sacra profanaque omnia et privatim et publice spoliavit*

¹⁴³ *nego ullam picturamneque in tabula neque in textili quin adquisierit, inspexerit, quod placitum sit abstulerit*

¹⁴⁴ *iam igitur est ita perspicuum ut negare non possis nullam tibi statuam voluntate cuiusquam datam, nullam pecuniam statuarum nomine nisi vi expressam et coactam*

¹⁴⁵ *tu quae ex fanis religiosissimis per scelus et latrocinium abstulisti, ea nos videre nisi in tuis amicorumque tuorum tectis non possumus*

Verres had perpetrated threatened the very well-being of Rome itself.” Frazel describes how Cicero viewed the governor, “Verres poses a national threat because he, like an enemy nation, attacks the rights that the Roman people hold, and have always held, most dear.¹⁴⁶ Cicero proclaimed that if anyone else had acted the way Verres did while in office, everyone would agree that person should be punished, “If some king, if some foreign community, if some tribe had done something like this against roman citizens, would we not avenge it as a nation, would we not attack them in war?” (Act. Sec. 5.149).¹⁴⁷ Through depicting Verres as a tyrant, Cicero elevated the stakes of the trial, as Frazel explains that Cicero “masterfully transforms the tyrannical paradigm into a wrenching emotional climax, for, of all things, a routine Roman provincial extortion case.”¹⁴⁸ By depicting Verres as a tyrant in these ways, Cicero adds to the formal charge of extortion and makes his prosecution even stronger against Verres. Presumably none of the ancient Roman senators in the jury would have thought that a tyrannical leader was permissible in Roman government. This claim of tyrannical nature and abuse of power reveals that the ancient Romans valued a government that would protect against tyranny and saw tyrannical leaders as a threat to the state.

Issue of Poor Character

In addition to attacking Verres as a tyrant who abused his power in government, Cicero assassinated Verres’ character in order to debase Verres and convince the jury that he was more than deserving of prosecution. Cicero employed a rhetorical technique of *praeteritio* by highlighting Verres’ character while seeming to disregard it. While Cicero pretended that he would not discuss Verres’ poor character, by saying that he would omit any discussion of

¹⁴⁶ Frazel, *The Rhetoric*, 155; 170.

¹⁴⁷ *si qui rex, si qua civitas exterarum gentium, si qua natio fecisset aliquid in civis Romanos eius modi, nonne publice vindicarem, nonne bello persequeremur?*

¹⁴⁸ Frazel, *The Rhetoric*, 185.

character, Cicero drew attention to Verres' character regardless. Cicero exposed Verres' poor character well before he became governor:

Therefore, I will pass by that first act of his life, most infamous and wicked as it was. He shall hear nothing from me of the vices and offenses of his childhood, nothing about his most dissolute youth... All that time which passed before he came into office and became a public character, he may have free and untouched as far as I am concerned. Nothing shall be said of his drunken nocturnal revels; no mention shall be made of his pimps, and dicers, and panders; his losses at play, and the licentious transactions which the estate of his father and his own age prompted him to shall be passed over in silence. He may have lived in all infamy at that time with impunity, as far as I am concerned; the rest of his life has been such that I can well afford to put up with the loss of not mentioning those enormities (Act. Sec. 1.32-33).¹⁴⁹

Cicero contended that this poor character extended to Verres' time in office, mentioning his lies, embezzlement, and cowardice, along with the "dishonesty and wickedness of his first conduct in his first office"¹⁵⁰ (Act. Sec. 1.41). Cicero completely slandered any reputation Verres might have had, "For we have brought before your tribunal not only a thief, but a wholesale robber; not only an adulterer, but a ravisher of chastity; not only a sacrilegious man, but an open enemy to all sacred things and all religion" (Act. Sec. 1.9).¹⁵¹ Additionally, Cicero found Verres' inability to attend the rest of trial as evidence of his dishonor and lack of strong character, "He does not even leave himself this much of character, to be supposed, by being silent and keeping out of the

¹⁴⁹ itaque primum illum actum istius vitae turpissimum et flagitiosissimum praetermittam. nihil a me de pueritiae suae flagitiis audiet, nihil ex illa impura adulescentia sua; quae qualis fuerit aut meministis, aut ex eo quem sui simillimum produxit recognoscere potestis. omnia praeteribo quae mihi turpia dictu videbuntur, neque solum quid istum audire, verum etiam quid me deceat dicere considerabo. vos, quaeso, date hoc et concedite pudori meo ut aliquam partem de istius impudentia reticere possim. omne illud tempus quod fuit antequam iste ad magistratus remque publicam accessit, habeat per me solutum ac liberum. sileatur denoturnis eius bacchationibus ac vigiliis; lenonum, aleatorum, perductorum nulla mentio fiat; damna, dedecora, quae res patriseius, aetas ipsius pertulit, praetereantur; lucretur indicia veteris infamiae; patiaturs eius vita reliqua me hanc tantam iacturam criminum facere

¹⁵⁰ inimicissimum atque improbissimum testimonium dixit

¹⁵¹ non enim furem sed ereptorem, non adulterum sed expugnatorem pudicitiae, non sacrilegum sed hostem sacrorum religionumque

way when he is so visibly convicted of the most infamous conduct, to have sought for a modest escape for his impudence” (Act. Sec.1.2).¹⁵²

Perhaps Cicero’s greatest point of criticism regarding character is Verres’ behavior towards women, to which Cicero frequently alluded in the speeches even though that behavior had no connection to the charge of extortion. Cicero aimed to present Verres in the worst light possible, so he took advantage of the stories he learned about Verres’ encounters with women.

Cicero asked, “To how many noble virgins, to how many matrons do you think he offered violence in that foul and obscene lieutenantancy? In what towns did he set his foot that he did not leave more traces of his rapes and atrocities than he did of his arrival?” (Act. Sec. 1.62).¹⁵³

Cicero highlighted how Verres, as a leader in government with considerable power, was able to subject women, particularly married women and young girls, to inappropriate situations through force. Cicero claimed that Verres’ lust interfered with performing his duties in government, for his time spent with women served as a distraction from his role as governor. Additionally, the fact that Verres sought women who were married or young illustrated that he had a perversion that undermined the entire community, because those women were not supposed to receive attention in such a way. Cicero argued that Verres’ depravity towards women created disharmony everywhere he travelled and threatened the Roman people, “Are your lusts, Verres, to be so atrocious, that the provinces of the Roman people, that foreign nations, cannot limit and cannot endure them?” (Act. Sec. 1.78).¹⁵⁴ Verres’ actions towards women were problematic not only because mistreatment of women is an unfavorable quality in a leader, but also because

¹⁵² *in rebus turpissimis cum manifesto teneatur, si reticeat et absit, tamen impudentiae suaepudentem exitum quaesisse videatur*

¹⁵³ *quam multis istum ingenuis, quam multis matribus familias in illa taetra atque impura legatione vim attulisse existimatis? ecquo in oppido pedem posuit ubi non plura stuprorum flagitiorumque suorum quam [Note] adventus sui vestigiareliquerit?*

¹⁵⁴ *tantaene tuae, Verres, libidines erunt ut eas capere ac sustinere non provinciae populi Romani, non nationes exterae possint?*

people often retaliated against Verres' actions with violence. Cicero brought forth several examples in which Verres wreaked havoc in towns through his mistreatment of women and argued, "Unless whatever you desire, whatever you think of, is in a moment to be subservient to your nod, is at once to obey your lust and desire, are men to be sent into people's houses? Are the houses to be stormed? Are cities...to be forced to have recourse to violence and to arms, in order to be able to repel from themselves and their children the wickedness and lust of a lieutenant of the Roman people?" (Act. Sec. 1.78).¹⁵⁵

Cicero's ongoing character assassination of Verres regarding his lack of honorable qualities and treatment of women helped present Verres as unlikable as possible for the jury. Discussion of Verres' pursuit of women even though he was married and even though the women did not consent depicted the governor as not only abhorrent and neglectful as a leader, but also rather weak because he could not control his desires. Through his poor character and weakness for women, Cicero argued that Verres set himself apart from the leaders in government who came before him, who maintained prudence and discipline. Cicero asked, "Consider what's the difference between your lust and the authority of our ancestors, your insane desire and their prudent judgment" (Act. Sec. 5.85).¹⁵⁶ Thus, Cicero made a strong claim for the prosecution of Verres, not only because he committed crimes in office, but also because he maintained a deplorable character before, during, and after his time as governor.

Issue of Expectations in an Office Holder

¹⁵⁵ *tunc quod videris, quod audieris, quod concupieris, quod cogitaris, nisi id ad nutum tuum praesto fuerit, nisi libidini tuae cupiditati que paruerit, immittentur homines, expugnabuntur domus, civitates non modo pacatae, verum etiam sociorum atque amicorum ad vim atque ad arma confugient, ut ab se atque a liberis suis legati populi Romani scelus ac libidinem propulsare possint?*

¹⁵⁶ *vide quid intersit inter tuam libidinem maiorumque auctoritatem, inter amorem furoremque tuum et illorum consilium atque prudentiam*

Cicero exploited the fact that Verres violated the notion of a proper office holder in ancient Rome. Roman society valued virtues of honor and integrity and expected public officials to serve as virtuous role models for the state. T.P. Wiseman states that, around the time Verres was in government, personal virtue was a more important qualification for office than nobility.¹⁵⁷ Later in Roman history, Tacitus presents a model for honorable office holders in Roman government through his depiction of Agricola, who “repressed abuses and restored peace” (Tac. Ag. 20) and who never expressed a “greedy spirit” (Tac. Ag. 22.).¹⁵⁸ Unlike Agricola, Verres wreaked havoc on Sicily, and his greed motivated him in all his endeavors. Cicero provided that leaders in Roman government were expected to be “restrained by fear of the laws and public opinion,” (Act. Sec. 5.167)¹⁵⁹ and similarly described the Roman senate as the “guardians of the laws and courts and justice” (Act. Sec. 5.171).¹⁶⁰ As a contrast to these ideals, Cicero maintained that Verres never acted in accordance with the laws or precedent. It is worth noting that in reality Roman government endured widespread criminal behavior and corruption, but Verres was most likely an extreme example of this behavior.

Verres fell quite short of the expectations of an office holder, and Cicero frequently emphasized how Verres was unworthy of any position in government. Verres’ actions in office directly contrasted with the virtues celebrated by the Roman people as Cicero asserted, “To this man’s audacity, and wickedness, and cruelty, our most faithful allies and most virtuous citizens were given up” (Act. Sec. 3.24).¹⁶¹ Canter explains the contrast between Verres’ position in government and his actual behavior, “Verres was honored with a position of responsibility and

¹⁵⁷ Frazel, *The Rhetoric*, 156.

¹⁵⁸ *haec primo statim anno comprimendo egregiam famam pacircumdedit, quae vel incuria vel intolerantia priorum haudminus quam bellum timebatur*

¹⁵⁹ *qui et legum et existimationis periculo continentur*

¹⁶⁰ *legum et iudiciorum et iuris auctores*

¹⁶¹ *huius audaciae nequitia crudelitati fidelissimos socios optimosque civis scitota hoc praetore traditos*

authority, was charged with peculation, bribery, injustice, oppression, inhuman cruelty, tyranny, and murder. Verres' name is a synonym for misrule, his private life another term for monstrous impurity, his memory no one has ever seriously thought of rescuing from excretion."¹⁶² Verres was by no means the kind of public official desired in Roman government. Cicero urged the jury to recognize this fact and convict Verres in order to restore the reputation of Roman government, "Since the whole order of the senate is weighed down by the discredit brought on it by the wickedness and audacity of a few"¹⁶³ (Act. Prim. 1.36).

Verres had no integrity in office, always striving to cover up his misconduct to avoid any punishment. Cicero exposed how Verres lied and misrepresented facts in order to steal and earn a profit for himself. While Verres "never allowed any moment of time to pass free from crime" (Act. Sec. 1.103),¹⁶⁴ Cicero explained that Verres always covered up his misdeeds, "For you have always fancied, and especially in Sicily, that you had taken sufficient precautions for your defense when you had either forbidden anything to be mentioned in the public records, or had compelled that which had been so mentioned to be erased" (Act. Sec. 1.88).¹⁶⁵ Cicero discussed that Verres would make up financial accounts to conceal the fact that he took money from the state for himself, and how this behavior defied the precedent of past office holders, "Did either I, or you, Hortensius, or any man ever give his accounts in this manner? What audacity! What precedent is there of any such in all the number of accounts that have ever been rendered by public officers?" (Act. Sec. 1.36).¹⁶⁶ Frazel explains that by emphasizing Verres' lack of

¹⁶² Canter, "The Impeachments," 201.

¹⁶³ *quoniam totus ordo paucorum improbitate et audacia premitur et urgetur infamia iudiciorum*

¹⁶⁴ *cum iste punctum temporis nullum vacuum peccato praeterire passus sit*

¹⁶⁵ *semper enim existimasti, et maxime in Sicilia, satis cautum tibi addefensionem fore, si aut referri aliquid in litteras publicas vetuisses, aut quod relatum esset tolli coegisses. hoc quam nihil sit, tametsi ex multis Siciliae civitatibus priore actione didicisti, tamen etiam in hac ipsa civitate cognosce*

¹⁶⁶ *hoc modo aut ego aut tu, Hortensi, aut quisquam omnium rettulit? quid hoc est? quae impudentia, quae audacia? quod exemplum ex tot hominum rationibus relatis huiusce modi est?*

integrity and criminal behavior, “Cicero repeatedly shows how Verres is utterly unworthy of any office, and indeed of any respect.”¹⁶⁷

Cicero argued that by failing to live up to the standard of officeholders in ancient Rome, Verres tainted the reputation of the entire Roman government. Cicero stated, “We are despised and scorned by the Roman people; we are branded with a heavy and long-standing infamy.” (Act. Prim. 1.43).¹⁶⁸ Cicero declared that it was the duty of the senate to hold Verres accountable, for it was not Verres who was on trial, but the entire senate regarding whether they chose to allow corruption and acquit this criminal or not. Cicero asked the jury of senators to right Verres’ wrongs, “You have in your power to remove and eradicate the disgrace and infamy which has now for many years attached to your order” (Act. Prim. 1.49),¹⁶⁹ and affirmed that this trial served as an opportunity to restore honor in government, “For I have brought before you a man, by acting justly in whose case you have an opportunity of retrieving the lost credit of your judicial proceedings, of regaining your credit with the Roman people” (Act. Prim. 1.2).¹⁷⁰ Given the number of witnesses who testified against Verres, Cicero even stated “The Roman people determined that if he were acquitted, the republic would no longer exist” (Act. Sec. 1.20).¹⁷¹

Verres exploited all of his opportunities in government, failing to embody the virtue and honor of a Roman leader. Verres was the kind of official who deserved removal, or at least a trial, and the Roman court system and senate proved an invaluable asset for accountability. Verres embodies the personality and behavior of an official that would be deemed unfit for office, and his trial reveals the nature of arguments against officials like him in ancient Rome.

¹⁶⁷ Frazel, *The Rhetoric*, 34.

¹⁶⁸ *itaque a populo Romano contemnimur, despiciuntur; gravi diuturnaue iam flagramus infamia*

¹⁶⁹ *vos aliquot iam per annos conceptam huic ordini turpitudinem atque infamiam delere ac tollere potestis*

¹⁷⁰ *adduxi enim hominem in quo reconciliare existimationem iudiciorum amissam, redire in gratiam cum populo Romano, satis facere exteris nationibus possetis*

¹⁷¹ *ut primo die testium tanto numero citato populus Romanus iudicaret isto absoluto rem publicam stare non posse*

While the trial of Gaius Verres and the Roman Republic may seem to be figments of the distant past, aspects of ancient mixed government and ancient impeachment would continue on in the American government. Cicero's arguments in the trial of Verres embody rhetorical strategies that would be used in later impeachment trials in America. Not only would the founders adopt characteristics of ancient Roman government in the Constitution, but also, as discussed in Chapters Five and Six, impeachment managers would employ rhetorical strategies like Cicero's for the removal of American Presidents.

Chapter Four

Classical Reception of the American Founders

When the American founders were tasked with creating a Constitution for a new government in 1787, they had the privilege of learning from the governments of the past. The founders were highly receptive to lessons from classical antiquity and frequently cited classical writings to defend their claims. Particularly regarding mixed government theory, the role of the senate, and function of impeachment, the founders looked back to ancient Rome. The founders were exposed to classical texts throughout their schooling, and had access to ancient government forms, political theories, and history. This classically-grounded education enabled the founders to apply writings from antiquity to the creation of a Constitution. William J. Ziobro explains the impact of classical education on a man in eighteenth-century America:

The omnipresent character of his engagement with classical antiquity--drilled in through years of study and memorization--guaranteed that his understanding of the proper organization and operation of American government was constructed from his understanding of the political thought expressed in the literature he read from ancient Greece and Rome.¹⁷²

¹⁷² William J. Ziobro, "Classical Education in Colonial America," in *Classical Antiquity and the Politics of America*, ed. Michael Meckler (Baylor University Press, 2006), 27.

This chapter seeks not to prove a direct influence of the classics, but to show how the founders were highly aware of the government of ancient Rome, in addition to Greece, and saw value in citing classical sources in their political discussions regarding forming a new government.

Before moving to what the founders drew from ancient Rome, the following section provides information regarding the significance of the classics in the eighteenth-century education system, and in society at large.

Classical Education of the Founders

Greek and Latin language, in addition to Greek and Latin writings and history, were a major aspect of education in the eighteenth-century. This school system shaped the thinking of the founders and instilled in them knowledge and appreciation for the classics.¹⁷³ So significant was classical education, that both the federalists and anti-federalists would have had a strong enough foundation in the classics to agree on ancient history and classical precedents of government, but differ as to how the classical ideas might apply to the new American government. As David Bederman writes, “Those who actually gathered in Philadelphia in the summer of 1787 for the Constitutional Convention were exceptional for their political acumen and classical learning, even by American elite standards of the day.”¹⁷⁴

As early as the age of eight, the founders began studying Latin and Greek all day long in grammar schools.¹⁷⁵ This early classical education served in preparation for college entry requirements, which required significant proficiency in the classical languages.¹⁷⁶ The education was by no means perfect, however, as Bederman sets forth, “By all contemporary accounts, the

¹⁷³ Carl J. Richard, *The Founders and the Classics* (Cambridge, MA: Harvard University, 1994), 12.

¹⁷⁴ David J. Bederman, *The Classical Foundations of the American Constitution* (New York, NY: Cambridge University, 2008), 223; 21.

¹⁷⁵ Richard, *The Founders*, 13.

¹⁷⁶ Ziobro, "Classical Education," in *Classical Antiquity*, 17.

quality of classical instruction in grammar schools was not high in the American colonies and in the early republic...Many teachers bordered on the incompetent.” Regardless of the disparity in quality of education, the founders would have received excellent classical instruction: 23 of the 29 members of the constitutional convention graduated from college, which would not have been possible without mastery of the Classics.¹⁷⁷ As Ziobro explains, “The classical atmosphere on the early American collegiate campus was intense.”¹⁷⁸ Bederman similarly states that college at the time was an “immersion in classicism.”

The founders had knowledge of and access to a wide range of classical texts, which they used as sources for political discussion. The founders not only saw merit in referencing the classics, but also believed that the use of classical texts would demonstrate the intellectual aptitude of their writing. As intellectual figure Reverend John Witherspoon explains, “A man is not, even at this time, called or considered a scholar unless he is acquainted in some degree with the ancient languages, particularly Greek and Latin.”¹⁷⁹ Highly aware of their role in establishing a new political system, the founders saw great value in classical allusions to previous governments in the works of Plato, Aristotle, Thucydides, Polybius, and Plutarch. Historical texts of Livy, Sallust, and Tacitus provided a broad understanding of ancient government. Cicero is perhaps the most prominent Latin author used by the founders. While the founders experienced rigorous training in Latin and Greek, many of them would have read these works in English translation.¹⁸⁰ Through these texts, the founders would form opinions about the Roman model of government, and theorize the role of the senate, and establishment of executive power.

¹⁷⁷ Bederman, *The Classical*, 5; 7.

¹⁷⁸ Ziobro, "Classical Education," in *Classical Antiquity*, 24.

¹⁷⁹ Bederman, *The Classical*, 9; 18; 7.

¹⁸⁰ *Ibid* 15; 17; 13.

John Adams wrote to Thomas Jefferson that the classics were “indispensable” to the founders.¹⁸¹ The classical texts were not always the direct source of information, but it is worth acknowledging that ideas from classical sources resonated in the works of enlightenment thinkers, which were significantly used by the founders as well. At best, the classics were used directly as a source for political discussion, and at worst, indirectly through the works of enlightenment thinkers.

In addition to offering useful knowledge of history and ancient governments, the classics bestowed on the founders certain values that shaped their way of thinking. Bederman notes that “along with how the framing generation learned Latin and Greek, studied classical texts, used classical references in their social discourse, and assumed classical modes of argument in their political debates, one must also consider the values that classical education imparted to American leaders involved with the Constitution’s drafting in 1787.” The classics provided the founders with “a sense of historical perspective; personal integrity and ideas of virtue, fame and honor in government; an already-created vocabulary for political discourse; and ways of thinking essential to understanding enlightenment thinking.”¹⁸² It is worth noting that not all of the founders shared the same level of appreciation for the classics. Ziobro states, “Not all of the founders were as enamored of the Greek and Romans as were Jefferson and Adams. Prominent critics of classical education included Benjamin Franklin, Thomas Paine, and Benjamin Rush.”¹⁸³ While not everyone valued ancient history as a guide to the creation of the Constitution, Bederman recognizes those were a “distinct minority.” Some may have not been as eager to look to the classics, but “the classics still structured and conditioned the debate.”¹⁸⁴ Society as a whole

¹⁸¹ Ibid, 19; 25.

¹⁸² Ibid, 1; 26.

¹⁸³ Ziobro, "Classical Education," in *Classical Antiquity*, 15.

¹⁸⁴ Richard, *The Founders*, 44; 38.

during the eighteenth-century held a sincere appreciation for the classics, and from the early age of childhood, the founders developed great knowledge of ancient government form and political ideas that they channeled in creating the Constitution. The founders would look back to ancient Rome in structuring the American government, creating a senate, and instilling a process for impeachment in the Constitution.

Mixed Government Theory

The American founders, like the ancient Romans, wanted to create a government that would protect against tyranny. Tyranny results from an unequal mixture in government, when the executive or monarchical role wields too much power. The founders looked back with distaste on the Roman emperors, who corrupted the Roman Republic by taking away the power distributed to other government institutions and expanded their own role.¹⁸⁵ The greatest villain of all to the founders was Julius Caesar, whom James Otis in 1764 denounced for destroying the Roman Republic, “the destroyer of the Roman glory and grandeur at a time when but for him and his adherents both might have been rendered immortal.” The founders would even label someone a “Caesar” when they felt that person was threatening the republic they were working to form. Looking back on the failures that drove the Roman Republic to descend into tyranny, the founders “became virtually obsessed with spotting its approach, so they might avoid the fate of their classical heroes.” With the same desire to protect against tyranny and construct a lasting republic, the founders were, as Carl Richard writes, “beginning anew the work of ancient republicans, only this time with an unprecedented chance of success.”¹⁸⁶ Drawing from the Roman Republic, the founders would have to adequately distribute political power across different government institutions to protect against tyranny in the new American government.

¹⁸⁵ Ibid, 118; 130; 88.

¹⁸⁶ Ibid, 91-92; 118; 84.

With a vision of separation of powers, the founders used mixed government theory from classical antiquity as a catalyst for structuring the new government.¹⁸⁷ While the founders by no means directly implemented ancient mixed government, the founders transformed mixed government theory discussed by ancient writers such as Plato, Aristotle, and Polybius to create the government with separation of powers and checks and balances.¹⁸⁸ The founders employed Polybius' idea that the best government mixes together monarchical, aristocratic, and democratic elements. John Adams was one of the most significant advocates for mixed government, writing in "An Essay on Man's Lust for Power" that "the best governments of the world have been mixed. The Republics of Greece, Rome, and Carthage were all mixed governments." Alexander Hamilton also advocated for mixed government, "If a government is in the hands of the few, they will tyrannize over the many. If it is in the hands of the many, they will tyrannize over the few. It ought to be in the hands of both; and they should be separated."¹⁸⁹ The founders strove to create a government that was neither democratic nor monarchical, but would mix elements of different government forms to ensure stability.¹⁹⁰ The founders departed from the ancient Roman model of mixed government by creating formal departments rather than a blurred separation of powers. While the mixed government of ancient Rome maintained equilibrium between social groups, the founders evolved from that ancient model and created a version of mixed government that had formal departments of power--the executive, legislative, and judicial. Richard writes, "In seeking to emulate Rome, a republic possessing dubious reputations for mixed government, the founders created something entirely new, a government truly mixed, though not by class."¹⁹¹

¹⁸⁷ Ibid, 123.

¹⁸⁸ Carl J. Richard, "Classical Antiquity and the United States Senate," in *Classical Antiquity and the Politics of America*, ed. Michael Meckler (Waco, TX: Baylor University, 2006), 31.

¹⁸⁹ Richard, *The Founders*, 132; 141.

¹⁹⁰ Bederman, *The Classical*, 51.

¹⁹¹ Richard, *The Founders*, 142.

Thus mixed government theory from ancient Rome did not provide a perfect model for the American government, but in part shaped ideas for structure that were manifested in the Constitution.

An issue confronted the founders hoping to implement mixed government: Unlike ancient Rome, America had neither a monarch nor an aristocracy, which were key elements to Polybius' theory. The founders chose to replace the monarch with an elected executive and the titled aristocracy with the Senate possibly consisting of a "natural aristocracy."¹⁹² The notion of natural aristocracy involves the idea that among men talent is unequal, and differences in talent yield differences in wealth. In order to avoid the resulting conflict of differences, the talented ought to govern the less-talented. The founders envisioned creating a body similar to an aristocracy, a stable body of men who are thoughtful and moderate--the Senate. Like the Romans, the Senate would be made up of the talented, whose deliberations would help govern the rest. The power of the Senate would be checked by the executive and the House of Representatives.¹⁹³ Following Polybius' model for mixed government, the people would also hold power in government. Just as the Roman Republic thrived from popular sovereignty, so too would the people ultimately ratify the rules in the new government. As James Madison set forth, "A republic is a government which derives all its powers directly or indirectly from the great body of the people...it is essential to such a government that it be derived from the great body of society."¹⁹⁴ And so the founders created a republic with formal separation of powers and checks and balances, partially justified by the mixed government theory from the ancient Rome. The

¹⁹² Richard, "Classical Antiquity," 31.

¹⁹³ Ibid, 32; 134.

¹⁹⁴ Bederman, *The Classical*, 212.

founders set forth the powers of every branch of government in individual articles, with legislative, executive, and judicial powers “vested” in each article of the Constitution.

Role of the American Senate

Within the constitutional separation of powers, the founders created a Senate, drawing from the classical precedent of the ancient Roman senate. Bederman argues that the founders had an appreciation for the function and composition of ancient senates.¹⁹⁵ In Federalist No. 63 James Madison emphasizes that, “History informs us of no long-lived republic which had not a senate.”¹⁹⁶ And despite many differences between ancient governments and the American government, Bederman states, “It may still be maintained, that there are many points of similitude which render these examples not unworthy of our attention.” The senate of ancient Rome, as a deliberative body that could advise the consuls, partially served as a model for the founders.¹⁹⁷

Much like the Romans, the founders envisioned a Senate as a deliberative body made up of those whose education set them apart. James Madison reasoned that America was not a “homogenous mass,” and the inequality in society may lead to “agrarian attempts” that would need to be checked by an aristocratic Senate.¹⁹⁸ Nicholas P. Cole explains how the aristocratic notion of the senate was contentious, “Those who opposed the constitution, the ‘Antifederalists’ opposed it on the grounds that it was too aristocratic, and the Senate in particular, elected as it was for long terms of office and then only indirectly, became a target of criticism.”¹⁹⁹ Even if not all of the founders agreed that the Senate should have an aristocratic nature, there was a general

¹⁹⁵ Richard, *The Founders*, 233.

¹⁹⁶ Publius, *Federalist No. 63* (n.p., 1788).

¹⁹⁷ Bederman, *The Classical*, 44.

¹⁹⁸ Richard, "Classical Antiquity," 29; 32.

¹⁹⁹ Nicholas P. Cole, "American Bicameralism and the Legacy of the Roman Senate," *Classical Receptions Journal* 7, no. 1 (2015): 79.

consensus that the Senate would be a “repository of experience and wisdom.”²⁰⁰ James Madison urged the need for a Senate to both represent the people and protect against the people, much like the ancient Roman senate:

Such an institution may be sometimes necessary as a defense to the people against their own temporary errors and delusions. As the cool and deliberate sense of community ought in all governments and actually will, in all free governments, ultimately prevail their own temporary errors and delusions. As the cool and deliberate sense of the community ought in all governments and actually will, in all free governments, ultimately prevail over the views of its rulers so there are particular moments in public affairs when the people, stimulated by some irregular passion or some illicit advantage or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind? ²⁰¹

Alexander Hamilton similarly declared, “There should be, in every republic, some permanent body to correct the prejudices, check the intemperate passions, and regulate the fluctuations of a popular assembly.”²⁰² Thus the senate was designed to be an elite institution, perhaps in an aristocratic sense, or in an intellectual sense, or for no other reason than the age of its members and their selections by state legislatures. Despite an elite nature, just as the Roman senate was opened to men of all rank across plebeians and patricians, the founders ensured the American Senate would be open to individuals of all classes and backgrounds.²⁰³

The founders had to assign the Senate specific functions in the Constitution, for which in part they looked to the senate of the Roman Republic. The founders followed the precedent of ancient Rome that the senate had control over government spending, and they delegated the

²⁰⁰ Bederman, *The Classical*, 139.

²⁰¹ Publius, *Federalist No. 63*.

²⁰² Richard, "Classical Antiquity," 33.

²⁰³ Bederman, *The Classical*, 148; 224.

power over the treasury to Congress. The founders gave the Senate the power to confirm nominations made by the President, following the power of the Roman senate to allocate certain offices of consular or judicial authority. The founders granted the Senate the authority to give “advice and consent” to treaties, following the Roman senate’s role in foreign relations, making treaties, and declaring war. Bederman writes, “To the extent that the framers followed the classical precedent of the Roman Republic, they clearly intended that the Senate has a definitive role in the negotiation of treaties.” And just as a magistrate presided over the deliberative bodies of the Roman Republic, so too would the Vice President, as the president of the Senate, preside over the Senate. And so Bederman establishes, “The senate was clearly modeled on a classical paradigm of a deliberative body, as a necessary component of mixed government.” Through the creation of the Senate in the Constitution and assignment of similar powers, the founders in part emulated the ancient Roman senate.

Function of Impeachment

The founders, like the ancient Romans, understood that mechanisms had to be put in place to hold members of government accountable for their actions in office. Without such mechanisms, the founders’ thoughtful approach to government structure would hold no weight over time if members of government could erode constitutional precedent without limits. Through the classically-rooted fear of tyranny, the founders instilled ways for the executive’s power to be limited.²⁰⁴ Valuing deliberation and popular representation, the founders empowered the largest body representative of the people, Congress, consisting of the Senate and the House of Representatives, to curtail the abuse of presidential power through impeachment and removal.²⁰⁵ The founders so recognized the value of a Senate that they granted the deliberative

²⁰⁴ Bederman, *The Classical*, 190.

²⁰⁵ *Ibid*, 148; 174; 14; 142.

body the ability to check the power of the executive in the most severe way through removal from office. Critics of the Senate argued against empowering the body with the authority to remove the President, but Hamilton countered:

A second objection to the senate, as a court of impeachments, is that it contributes to an undue accumulation of power in that body, tending to give to the government a countenance too aristocratic. The senate is to have concurrent authority with the executive in the formation of treaties and in the appointment to offices, if, say the objectors, to these prerogatives is added that of deciding in all cases of impeachment, it will give a decided predominance to senatorial influence. To an objection so little precise in itself, it is not easy to find a very precise answer. Where is the measure of criterion to which we can appeal, for determining what will give the senate too much, too little, or barely the proper degree of influence.²⁰⁶

The founders wanted to ensure that no role in government would assume so much power as to erode liberty or to abuse a position of authority and that a process was in place to ensure constitutional behavior in leaders. No office-holder, even the executive, would be “above the law.” Alexander Hamilton remarked, “By making the executive subject to impeachment, the term monarchy cannot apply. These elective monarchs have produced tumults in Rome.”²⁰⁷

In establishing impeachment in the Constitution, the founders took note of the process of removal and accountability in classical antiquity. Government leaders from ancient Rome to America have understood that in order to protect against tyranny, processes need to be in place to hold officials accountable. As discussed in Chapter Two, the ancient Romans had mechanisms for removal and accountability, and the founders could review and adapt these processes to better fit the new American government. The audit of magistrates, removal of senators, and trials of officials all held members of government accountable in ancient Rome. These mechanisms set a precedent for future governments to adopt ways to check the power of officials. The audit of

²⁰⁶ Publius, *Federalist No. 66* (n.p., 1788).

²⁰⁷ Steve Coffman, comp., *Words of the Founding Fathers: Selected Quotations of Franklin, Washington, Adams, Jefferson, Madison, and Hamilton, with Sources* (Jefferson, NC: McFarland & Company, 2012), 94.

magistrates was an important way to review actions in office, but the founders rejected the idea that review of actions could occur only after the official left office. The founders ensured that officials could be reviewed and subject to impeachment at any time during or after office.²⁰⁸ The removal of senators in ancient Rome set a precedent for the impeachment of officials, but the founders expanded the process of removal to the executive. Looking back at ancient Rome, Benjamin Franklin observed that without a process of removal for the executive, assassinations were frequent. Recognizing that the alternative of impeachment was assassination, Franklin urged a process of impeachment for the American President, “The recourse was had to assassination, in which he was not only deprived of his life, but of the opportunity of vindicating his character. It would be the best way therefore, to provide in the Constitution for the regular punishment of the Executive where his misconduct should deserve it, and for his honorable acquittal where he should be unjustly accused.”²⁰⁹ The founders did not want a system in which officials could be removed on a whim by an authority, as with the Roman senators by the censor. Rather, the founders reserved the ability to impeach for the House of Representatives, who would deliberate and vote. The Constitution provides, “The House of Representatives...shall have the sole power of impeachment.”²¹⁰ Continuing the precedent of the senate as a judicial body, the founders reserved the process of removal to the Senate through a trial. The Constitution provides, “The Senate shall have the sole power to try all impeachments.”²¹¹ This division of authority in impeachment and removal slowed down the process and ensured that officials had a fair chance for a defense before being removed from office. The founders also

²⁰⁸ Bederman, *The Classical*, 193; 197.

²⁰⁹ *Madison Debates*, July 20, 1787.

²¹⁰ U.S. Const. art. I § 2, cl. 5

²¹¹ U.S. Const. art. I § 3, cl. 6.

moved away from the ancient Roman ambiguity in criteria for removal by establishing a standard for impeachment in the American Constitution. In *Federalist 69*, Alexander Hamilton provides:

The President of the United States would be liable to be impeached, tried, and upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law.²¹²

These ideas were manifested in the Constitution as “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”²¹³ The founders also drew from the classical notion of honor in holding office, and thus anticipated the process of impeachment and removal to disgrace public officials much like in ancient Rome. The process of impeachment, as Alexander Hamilton writes in *Federalist 65*, “could doom to honor or to infamy the most confidential and the most distinguished characters of the community.”²¹⁴ Thus the framers were receptive to practices of removal and accountability from ancient Rome and, valuing the role of the Senate, placed the ability to remove an executive within the jurisdiction of the deliberative body. Within a government founded on similar principles, a comparable structure and similar process of impeachment, the connection between ancient Rome and America would not end with the creation of the Constitution. The resemblance to ancient Rome would continue through the impeachment trials of American presidents, as impeachment managers would bring up arguments against Presidents similar in nature to that of ancient Rome.

Chapter Five

The Trial of Andrew Johnson

²¹² Publius, *Federalist No. 69* (n.p., 1788).

²¹³ U.S. Const. art. II § 4.

²¹⁴ Publius, *Federalist No. 65* (n.p., 1788).

For 80 years following the founding of the Constitution, Congress did not utilize its power under Article II, Section 4. Congress considered the meaning of “high Crimes and Misdemeanors” for the first time in 1868, marking the first executive to be held accountable through impeachment in the American government. Significant uncertainty surrounded this first American impeachment. As Brenda Wineapple explains, “No one knew what the first-ever impeachment of the President of the United States would look like or what sufficient grounds, legal or otherwise, were necessary.”²¹⁵ While the founders knew that impeachment was necessary in the American government, very little information was specified outside of a few lines in the Constitution. Even though the impeachment of a President was a daunting and unprecedented task, opposition to President Andrew Johnson had become so strong that Congress regarded impeachment and removal as the only option to protect against excessive executive encroachment and the unravelling of post-Civil War America.

Unlike Verres, an extensive amount of information is available on Andrew Johnson and his impeachment. As Johnson’s reputation has changed throughout the years, the wide range of scholarly opinions on Andrew Johnson poses a challenge to creating an unbiased narrative. Mary Ruth Lenihan cautions that historical works have presented Andrew Johnson differently depending on the period in which the work was published.²¹⁶ Furthermore, scholars have debated whether the impeachment of Andrew Johnson was justified. David O. Stewart states that the whole affair was a “political and legal train wreck.” Wineapple counters, “to reduce the impeachment of Andrew Johnson to a mistaken incident in American history is to forget the

²¹⁵ Brenda Wineapple, *The Impeachers: The Trial of Andrew Johnson and the Dream of a Just Nation* (New York: Random House, 2019), XX.

²¹⁶ Mary Ruth Lenihan, *Reputation and History: Andrew Johnson's Historiographical Rise and Fall* (n.p.: University of Montana, 1986), 126.

extent to which the very fate of the nation lay behind Johnson's impeachment."²¹⁷ Recognizing differing opinions among scholars, this chapter does not aim to judge whether what Andrew Johnson did was right or wrong, or whether his impeachment was justified or not. Rather, this chapter seeks to understand what led Andrew Johnson to become the first American President deemed worthy of impeachment and to draw a connection between the arguments made against him and the arguments made against Gaius Verres in trial. In order to understand what motivated Andrew Johnson's impeachment, the following section illustrates the events leading up to the trial of Andrew Johnson.

Background of Andrew Johnson

When Abraham Lincoln died on April 15, 1865, Andrew Johnson became the seventeenth President of the United States.²¹⁸ Johnson stepped into the presidency during one of the most tumultuous times in American history -- the post-Civil War era. Howard Means explains that "anger, despair, revenge, fear, and hysteria" all describe the sentiments regarding Lincoln's assassination in the already-broken country.²¹⁹ America was reeling from the Civil War, and crucial issues were still unresolved. How would the confederate states rejoin the Union? What would be the legal and social status of African Americans?²²⁰ Johnson was tasked with leading the reconciliation of a divided nation and addressing these major social issues. This situation was made even more difficult as Johnson held different views and political affiliations than the majority of Congress and the President he was replacing. Lincoln had been a Republican who had promoted the interests of the North, but Johnson was not only a loyal Southerner, but

²¹⁷ Wineapple, *The Impeachers*, XXV.

²¹⁸ Lenihan, *Reputation and History*, 3.

²¹⁹ Howard B. Means, *The Avenger Takes His Place: Andrew Johnson and the 45 Days That Changed the Nation* (Orlando, Fla.: Harcourt, 2006), 8.

²²⁰ Albert Castel, *The Presidency of Andrew Johnson* (Lawrence: Regents Press of Kansas, 1979), 18.

also a true Democrat. Even though the Americans had elected a Republican, they now had a Democrat as President.

Andrew Johnson did not have the skills to be an effective leader, especially for a country in turmoil. Johnson's childhood in dire poverty consisted of an "upward struggle" that, according to Castel, instilled in him a bitterness towards anyone who stood in his way and an aversion to work with others, which posed a challenge for his time in office.²²¹ Means states that if Johnson made up his mind, he could not "be budged a single inch off the mark he had set."²²² This obstinacy and independence did not bode well for the new President in government, who already held opposing views to the Republican-dominated Congress. Reflecting on this situation in which a man who preferred to work on his own was catapulted into the presidency at a time when teamwork in government was essential to progress, Lenihan labels Andrew Johnson, "The wrong man in the wrong place at the wrong time."²²³

Johnson handled his initial moments as President with grace, however, exhibiting amiable behavior that would ultimately not last very long. Secretary of Treasury Hugh McCulloch wrote, "The conduct of Mr. Johnson favorably impressed those who were present when the oath was administered to him. He was grief-stricken like the rest...but he was nevertheless calm and self-possessed."²²⁴ Out of respect for Lincoln's wife, Johnson waited to move into the White House for six weeks. Johnson called a national day of mourning to recognize the hundreds of thousands of citizens killed in the war and the murder of Abraham Lincoln.²²⁵ While one day was not enough to heal the wounded nation, Johnson did his best to

²²¹ Ibid, 2.

²²² Means, *The Avenger*, 172.

²²³ Lenihan, *Reputation and History*, 1.

²²⁴ Castel, *The Presidency*, 17.

²²⁵ Wineapple, *The Impeachers*, 27; 28.

acknowledge time for grieving on both sides of the war. Flooded with correspondence from advisors and citizens' groups, Johnson had to manage a nation in crisis. Means explains, "Everyone was trying to sway him, the one whose ear everyone--senators, generals, association heads, the franchised and the disenfranchised, the rich and the poor--was seeking to bend. Johnson spent all of his time in the beginning of office meeting with delegations to determine how to approach this national crisis.²²⁶ While all of these endeavors were a solid beginning, when Johnson moved to address substantive issues and take control of governance, opposition and resentment from the Republican party began to grow, from which the impeachment charge would eventually manifest.

The Struggle Between Johnson and Congress

Johnson's first step in alienating Congress was his approach towards the issue of Reconstruction. In an effort to address the devastation in the South, Johnson issued proclamations on May 29, 1865 that approached the Southerners with great leniency, acting against the wishes of radical Republicans. In these proclamations, Johnson granted full amnesty to the Southern states, issuing pardons and restoring property to the Southerners who participated in the Civil War.²²⁷ Johnson proclaimed that since the Southern states never ceased to be states, they would not be treated as conquered territories or placed under martial law, as the radical Republicans wanted. Johnson did not believe that those punitive measures would promote restoration in the South, but through this policy he disregarded the wishes of the rest of the American government.²²⁸

²²⁶ Means, *The Avenger*, 122; 171; 119.

²²⁷ Castel, *The Presidency*, 26.

²²⁸ Means, *The Avenger*, 214.

A major problem with Johnson's approach towards Reconstruction was that he created this policy without consulting Congress, setting the tone for his presidency that Johnson had no reservations acting alone on areas of national interest. At the time of these proclamations, Congress was in recess. While Johnson could have waited until Congress met in December or called a special session to work with Congress, he ignored the advice of his opponents and created a policy on his own. The Northerners and Republicans did not protest these proclamations outright, but they certainly hoped this policy was not permanent and was merely an experiment to see how the South would respond to leniency.²²⁹ When the plan failed miserably, however, Johnson refused to adapt or listen to suggestions for change. Despite criticism and motions for Johnson to reconsider, he demonstrated no intention of altering his policy on Reconstruction and was comfortable continuing to alienate the radical Republicans.²³⁰ The Republicans watched as the Southerners used their pardons to restore the Southern states almost to the way they had been before the Civil War, and no progress was made in the South.²³¹ The Republican-dominated Congress could never accept this policy, and resistance only grew stronger as time passed.

Johnson's Reconstruction policy held racial implications that created a deeper conflict with Congress. While the Republicans wanted to take steps towards racial equality through Reconstruction, Johnson demonstrated no interest in protecting the African Americans living in the South. Johnson completely ignored the issue of black suffrage in his Reconstruction policy.²³² By treating the Southerners with great leniency, Johnson allowed the white

²²⁹ Castel, *The Presidency*, 30; 58.

²³⁰ Trefousse, *Impeachment of a President*, 9.

²³¹ Hans L. Trefousse, *Impeachment of a President: Andrew Johnson, the Blacks, and Reconstruction* (Knoxville: University of Tennessee Press, 1975), 13.

²³² Wineapple, *The Impeachers*, 34.

Southerners to continue to oppress and deny the rights of African Americans. Trefousse asserts, “The net effect of Johnson’s Southern policy was the continued subordination of black people to their former masters.”²³³ Johnson believed that the government was not responsible to aid the African Americans, “future prosperity and condition must, after all, rest mainly on themselves. If they fail, and so perish away, let us be careful that the failure shall not be attributable to any denial of justice.” Johnson not only harbored racial animosity, but also was a previous slave owner. This background and attitude on race led Johnson to refuse to support any policies that furthered racial equality.²³⁴ When Frederick Douglas, a renowned African American orator, met Andrew Johnson for the first time, Douglas remarked, “Whatever else this man may be, he is no friend of our race.”²³⁵ In response to the lack of acknowledgement of African Americans in Johnson’s Reconstruction program, Congress took other measures to provide civil rights. As Congress strived to enfranchise African Americans in the South, Johnson resisted, damaging his reputation further as he made public remarks on his beliefs that African Americans were inferior, “If anything can be proven by known facts, if all reasoning upon evidence is not abandoned, it must be acknowledged that in the progress of nations [African Americans] have shown less capacity for government than any other race of people...wherever they have been left to their own devices, they have shown a constant tendency to relapse into barbarism.”²³⁶ The more Johnson and Congress disagreed on racial equality, the greater the divide grew and the more disfavor was fostered towards the President.

Johnson used the executive veto power freely to obstruct Congressional legislation regarding civil rights and Reconstruction, which eventually alienated the entire Republican party.

²³³ Trefousse, *Impeachment of a President*, 13; 32.

²³⁴ *Ibid*, 5.

²³⁵ Means, *The Avenger*, 217; 176.

²³⁶ *Ibid*, 219.

Congress proposed the Civil Rights Bill, which provided African Americans with citizenship and procedures of enforcement to ensure equal treatment under state law. Along with overtly believing that African Americans were undeserving of this protection, Johnson also viewed this bill as a violation of states' rights. Despite the advice of colleagues to sign the bill, Johnson proceeded to veto the Civil Rights Bill.²³⁷ Congress was outraged by Johnson's veto. Castel explains, "It was this veto and the manner in which it was expressed that angered Northerners most and broke the last link between Johnson and most moderate Republicans...The moderates felt that they had no choice except to join the radicals in all-out opposition of the President." In response to Johnson's veto, Congress, for the first time in American history, overturned a presidential veto, further illustrating the opposition growing against the President.²³⁸ The political consequences for Johnson following this veto were major, as Trefousse describes, "That the President had finally declared war on Congress was evident to all."²³⁹ The President's stubbornness and inflexibility had alienated an entire political party. At this point in the spring of 1867, Johnson had almost no influence with Congress. Even though he had no political power left, Johnson still had institutional power as President, which he continued to use to promote his own policies and combat the Republicans through vetoes. The exchange of Congressional legislation and executive veto continued through subsequent bills. When Johnson vetoed the Freedman Bureau Bill in July, the Senate and the House overrode the veto.²⁴⁰ With the President obstructing, Congress understood that the best way to ensure its own Reconstruction program would be to amend the Constitution.²⁴¹ As Congress worked to pass the fourteenth amendment

²³⁷ Trefousse, *Impeachment of a President*, 26.

²³⁸ Castel, *The Presidency*, 71.

²³⁹ Trefousse, *Impeachment of a President*, 27.

²⁴⁰ Castel, *The Presidency*, 72; 117; 75.

²⁴¹ Trefousse, *Impeachment of a President*, 27.

and advance its own agenda for Reconstruction, Johnson continued his resistance, rejecting all advice and suggestions of compromise.²⁴² Trefousse describes, “President Johnson’s veto of the Civil Rights Bill and his opposition to the Fourteenth Amendment merely underlined what had been evident all along: his determination to have his own way in reconstructing the South, whether Congress agreed with him or not.”²⁴³ Johnson would publicly denounce Congress. As Wineapple writes, “Over and over, he called Congress a body hanging on the verge of the government, he frustrated the laws of Congress; he branded its leaders as traitors.” Opponents argued that Johnson and his cabinet were denying the legitimacy of Congress. Through this fight over Reconstruction policy and African American rights, Congress and the President were at war.

Johnson frustrated Congress even more by removing members of government from office if they opposed his agenda. Johnson would “turn good men out of office,” and replace them with supporters of his own policies.²⁴⁴ Trefousse chronicles the extent of these punitive removals, “It was clear to every radical officeholder that the President’s control of patronage was a grave danger to the Republican party. While at first removals had been few, during the campaign of 1866 their pace quickened: 1,644 postmasters were removed between July 28 and December 6, 1283 of these for political reasons.”²⁴⁵ With Johnson attempting to remove those who dared to disagree with him, Congress recognized that Johnson had to be curtailed.²⁴⁶ Congress worked to curb executive patronage by drafting the Tenure of Office Act,²⁴⁷ which required the President to “secure the approval of the Senate before firing or suspending any federal officer, including

²⁴² Castel, *The Presidency*, 73.

²⁴³ Trefousse, *Impeachment of a President*, 30.

²⁴⁴ Wineapple, *The Impeachers*, 164; 166.

²⁴⁵ Trefousse, *Impeachment of a President*, 44.

²⁴⁶ Wineapple, *The Impeachers*, 185.

²⁴⁷ Trefousse, *Impeachment of a President*, 43.

members of the cabinet, who'd been confirmed by the Senate." In a fashion similar to the norm, Johnson vetoed the act and Congress overrode the veto. The Tenure of Office Act was eventually repealed in 1887, but for the purposes of Johnson's impeachment, this act was crucial: Violation of the Tenure of Office Act served as the basis for the impeachment of Andrew Johnson.

Johnson's Violation of the Tenure of Office Act

Edwin M. Stanton was the Secretary of War whom Johnson inherited from Lincoln's cabinet. Stanton disagreed with the President's policies, and Johnson was fully aware of this disapproval.²⁴⁸ Johnson had to work with Stanton on the Reconstruction agenda, but Stanton stood in the way of Johnson's plans to restore the South to the way it was before the war. In order to advance his own agenda for Reconstruction, Johnson had to remove Stanton from his cabinet. On the morning of August 5, 1868, while Congress was in recess, President Johnson composed a note to Stanton that provided his resignation from Secretary of War.

Stanton was protected by the Tenure of Office Act, and firing him without approval of the Senate would be breaking the law. Johnson alleged that he was only suspending Stanton, and thus did not violate the act directly. In Stanton's place, Johnson asked Ulysses S. Grant to act as Secretary of War *ad interim*, in hopes of hindering the Military Reconstruction Acts of Congress.²⁴⁹ The Republican-dominated Senate voted that it did not concur with the suspension of Stanton. Having been Secretary of War *ad interim* for only a short time, Grant discovered the penalties of his violating the Tenure of Office Act, which consisted of a fine and imprisonment. Grant told Johnson that he would no longer serve as Secretary of War *ad interim* given the penalties of violating the act and his fear of offending the Republicans who had voted

²⁴⁸ Ibid, 36.

²⁴⁹ Wineapple, *The Impeachers*, 210-212.

nonconcurrency.²⁵⁰ With Grant having stepped down, Johnson moved to find a new Secretary of War *ad interim* and violate the Tenure of Office Act again. Johnson asked William Sherman, who declined twice, John Potts, and finally Lorenzo Thomas, who agreed. Johnson sent the Senate a notification of Stanton's dismissal and Thomas' appointment, and the Republicans in both chambers exploded with anger at Johnson's defiance.²⁵¹ The Senate voted and declared that "the President had no legal or constitutional power to remove the Secretary of War and to designate any other officer to perform the duties." As Johnson refused to back down, this extreme defiance of Congress and endangering of Congress' Reconstruction program convinced the members that Johnson had to go, and impeachment was the only option. Johnson understood that he was risking impeachment in his removal of Stanton, but he claimed "If I cannot be President in fact, I will not be President in name alone."²⁵²

On February 24, 1866, the House voted 126-47 to impeach President Johnson.²⁵³ Wineapple describes, "The highly unlikeable President Johnson was impeached and then brought to trial in the Senate by men who could no longer tolerate the man's arrogance and bigotry, his apparent abuse of power, and most recently, his violation of the law."²⁵⁴ The House decided on eleven impeachment articles against Johnson, of which nine surrounded his violation of the Tenure of Office Act in dismissing Stanton and attempting to replace him as Secretary of War.²⁵⁵ While the eleven articles in their original form are lengthy and verbose, a report summarizes the articles as the following:

²⁵⁰ Castel, *The Presidency*, 159-160.

²⁵¹ Ibid, 168; 170.

²⁵² Ibid, 172; 178.

²⁵³ Michael J. Gerhardt, *Impeachment: What Everyone Needs to Know* (New York: Oxford University Press, 2018), 32.

²⁵⁴ Wineapple, *The Impeachers*, XXV.

²⁵⁵ Gerhardt, *Impeachment: What*, 32.

Article 1. Unlawfully removing Mr. Stanton, in violation of the Tenure of Office Act.

Article 2. Unlawfully appointing Lorenzo Thomas Secretary of War ad interim.

Article 3. Substantially the same as Article 2, with the addition that no vacancy then existed.

Article 4. Conspiring with Lorenzo Thomas, and others unknown, to prevent Mr. Stanton from holding the office of Secretary of War.

Article 5. Conspiring with General Thomas and others to hinder the execution of the Tenure of Office Act, and to prevent Mr. Stanton acting as Secretary of War.

Article 6. Conspiring with General Thomas and others to take forcible possession of the property in the War Department.

Article 7. Repeats, in other terms, the charges contained in Article 5.

Article 8. Represents the charge contained in Article 6.

Article 9. Declaring that a law passed on June 30, 1867, which directs that “all orders and instructions relating to military operations, issued by the President or Secretary of War, shall be issued through the General of the Arm, and in case of his inability, through the next in rank” was unconstitutional, with an intent to induce a violation of the law and to obey orders issued directly by the President.

Article 10. Attempting to bring into disgrace Congress and uttering loud threats and bitter menaces against Congress (To this article are appended copious extracts from speeches of Mr. Johnson).

Article 11. Declaring in substance, in a public speech, August 16, 1866, that the Thirty-ninth Congress was not the Congress of the United States, intending to deny that its legislation was valid; and with devising and contriving means by which to prevent Mr. Stanton from forthwith resuming the functions of Secretary of War.²⁵⁶

The House appointed Thaddeus Stevens and John A. Bingham as the main impeachment managers, in addition to George Boutwell, James Wilson, John Logan, Thomas Williams, and Benjamin Butler.²⁵⁷ These men argued for Andrew Johnson’s removal in the trial of the Senate. While the eleven charges of impeachment laid the foundation for arguments against Johnson, the impeachment managers made additional arguments surrounding the charges in a similar manner to that of Cicero against Verres, illustrating that in similar government structures, similar

²⁵⁶ Andrew Johnson, *The Great Impeachment Trial of Andrew Johnson, Seventeenth President of the United States: A Full and Impartial Report* (Philadelphia: Barclay & Co., 1868), 8.

²⁵⁷ *Ibid.*, 7; 9.

concerns regarding public officials arise. Along with citing the charges of impeachment, the managers also emphasized Johnson's abuse of power and "king-like" attitude, his criminal character, and his failure to embody the integrity expected in a President. Thus 2000 years later, issues of abuse of power, character, and expectations of an office holder were still central to the arguments made against a public official in trial. While none of these issues are the "high Crimes and Misdemeanors" that would warrant the removal of a President, these greater claims all worked to convince the Senate that Johnson was undeserving of office, as did his violation of the law. In this way, the rhetoric in the first impeachment trial of an American President held a resemblance to the rhetoric in the trial of an Ancient Roman governor. The following section uncovers the arguments made against Johnson in greater detail in an effort to illustrate their similarity to the arguments against Verres.

Issue of Abuse of Power

Multiple impeachment managers argued that Johnson abused his power as executive through the removals of Stanton and other members of government who opposed his policy. These claims of abuse of power worked to try to convince the Senate that President Johnson deserved removal. George Boutwell contended that Johnson "assumed to himself absolute and unqualified power over all the offices and officers of the country."²⁵⁸ Benjamin Butler similarly noted that Johnson acted with an understanding that he had power without end in removing Stanton, "To exercise this illimitable power claimed by him, he did suspend Mr. Stanton."²⁵⁹ Boutwell stated that Johnson's efforts to remove and replace members of government were a usurpation of power, "His object was to seize the offices of government for the purposes of

²⁵⁸ Ibid, 36.

²⁵⁹ *Trial of Andrew Johnson, President of the United States before the Senate of the United States, on Impeachment by the House of Representatives for High Crimes and Misdemeanors* (Washington: Government Printing Office, 1868), 1: 104.

corruption.” By removing anyone who stood in his way, Johnson attempted to assume all power of government and silence opposition against him, “In short, he resorted to this usurpation as an efficient and necessary means of usurping all power and of restoring the government to rebel hands.”²⁶⁰ Thomas Williams extended this argument of abuse of power in labelling Johnson as a dictator, “He claims and asserts the power of a dictator by abrogating to himself the absolute and uncontrollable right to remove or suspend at his mere will, every executive officer of the government on the land.”²⁶¹

Claims that Johnson was dictator instead of President were not solely regarding his removals, however, for the impeachment managers also broadly called Johnson a king or tyrant in their arguments, knowing those words would alarm the Senate. John Bingham introduced Johnson as a king, “His highness, Andrew Johnson, first king of the people of the United States in imitation of George III.” Bingham asked the Senate if it is going to allow the idea that “the king can do no wrong.”²⁶² Williams emphasized how undesirable this “monarchy” is in America, contrasting the idea of a monarchy with the ideals of American government, “In a monarchy, people are the creatures of his imperial will...This would be a sad condition indeed for the people of a republic claiming to be free.” Williams called Johnson a title conceivably worse than a king --a tyrant. Likening Johnson to a tyrant, Williams asserted that Johnson’s advisors were his “minions” who acted with total disregard of the Constitution, “But who made these men the advisors of the President? Not the Constitution, certainly...No tyrant who has held the lives of those around him in his hands has ever enjoyed the counsels of any but minions.”²⁶³ Since the

²⁶⁰ Johnson, *The Great*, 35-36.

²⁶¹ Ibid, 71.

²⁶² Ibid, 105; 108.

²⁶³ *Trial of Andrew Johnson, President of the United States before the Senate of the United States, on Impeachment by the House of Representatives for High Crimes and Misdemeanors* (Washington: Government Printing Office, 1868), 2: 251.

founders had a major goal to avoid tyranny, the arguments that Johnson was a king or tyrant worked to warn the Senate that the President threatened everything that the American government stood for.

The impeachment managers also argued that Johnson abused his power through his refusal to work with and total disregard of Congress, which violated the constitutional balance the framers had established. Butler urged that Johnson abused his veto power of Congressional legislation, “He used his veto power indiscriminately to prevent the passage of wholesome laws.”²⁶⁴ Bingham asserted, “By denying the constitutionality of the Thirty-Ninth Congress, and by the act heretofore referred to, he did assume to himself the prerogative of dispensing with the laws and of suspending their execution at his pleasure.”²⁶⁵ Butler labeled Johnson’s actions towards Congress a usurpation of power, “He everywhere denounced Congress, the legality and constitutionality of its action, and defied its legitimate powers.”²⁶⁶ Bingham likened Johnson’s disregard for laws and another branch of government to anarchy, stating the issue at hand is “whether the President may at his pleasure or without peril to his official position, set aside and annul both the constitution and the laws of the United States, and thereby inaugurate anarchy.”²⁶⁷ Butler argued that this reckless behavior towards Congress had no precedent in American government, “The President was playing fast and loose with this branch of the government, which was never before done save by himself.”²⁶⁸ This abuse of power and disregard for Congress would only get worse, Bingham argued, if Johnson remained in office, “God only knows to what absurd conclusions he may arrive hereafter if by your judgement you recognize

²⁶⁴ *Trial of Andrew*, 1: 122.

²⁶⁵ Johnson, *The Great*, 117.

²⁶⁶ *Trial of Andrew*, 1: 122.

²⁶⁷ Johnson, *The Great*, 106.

²⁶⁸ *Trial of Andrew*, 1: 104.

this omnipotent prerogative in him.”²⁶⁹ Butler similarly contended, “Never again, if Andrew Johnson go quit and free this day, can the people of this or any other country by constitutional checks or guards stay the usurpations of executive power.”²⁷⁰ These arguments illustrated how one person could destroy the balance of power and erode the precedent established by the founders, at least according to the impeachment managers.

Like Cicero, the impeachment managers argued that Johnson’s abuse of power threatened the state, which elevated the charge to a more serious level than mere violation of an act. Boutwell urged, “The object of this proceeding is not the punishment of the offender, but the safety of the state.” Boutwell went on to say that Johnson had harmed the country through his actions, “Evils have fallen upon the country from the President’s abuse of the appointing power.” Boutwell claimed that through Johnson’s abuse of power, he acted with an “interpretation of the constitution that is hostile to the peace and welfare of the country.”²⁷¹ Johnson’s abuse of power oppressed the American people, “All classes are oppressed by the private and public calamities which he has brought upon them.”²⁷²

Just as Cicero professed that the Senate had the duty to restore the Republic after Verres’ abuse of power, the impeachment managers similarly addressed the Senate and placed the burden on the Senate to curb Johnson’s abuse of power. The Senate not only had the constitutional duty to remove an official set forth by the founders, but also the responsibility to restore order in government, just like the senate in the courts of ancient Rome. Butler urged the responsibility of the Senate to restore the institutions harmed by Johnson’s usurpation of power, “The responsibility is with you, safeguards of the Constitution against usurpation are in your hands;

²⁶⁹ Johnson, *The Great*, 111.

²⁷⁰ *Trial of Andrew*, 1: 122.

²⁷¹ Johnson, *The Great*, 35-36.

²⁷² *Ibid*, 38.

the interests and hopes of free institutions wait upon your verdict.”²⁷³ Williams similarly called upon the Senate’s duty to remove Johnson, “It becomes your high and solemn duty to see that the republic shall take no detriment, and to speak peace to a disturbed and suffering land, by removing him from the trusts he has abused, and the office he has disgraced.”²⁷⁴ Boutwell announced, “Senators, as far as I am concerned, the case is now in your hands.” If the Senate acquitted Johnson, Boutwell argued, the Senate would surrender American government to Johnson’s abuse of power, “By his acquittal you surrender the government into the hands of a usurping man, who will use all the vast power he now claims for the corruption of ever branch of the public service and the final overthrow of the public liberties.”²⁷⁵

Issue of Poor Character

Along with painting Andrew Johnson as an abuser of power who threatened the state, the impeachment managers also addressed Johnson’s poor character in their surrounding arguments. Just as Cicero highlighted Verres’ character to humiliate the governor at his trial, character assassination continued in this American trial as the impeachment managers denounced Johnson’s virtues and morals in front of the Senate. Butler emphasized that Johnson’s disregard of the law and shamelessness was indicative of his poor character, “If Andrew Johnson never committed any other offense--if we knew nothing of him save from this avowal--we should have a full picture of his mind and heart, painted in colors of living light, so that no man will ever mistake his mental and moral lineaments hereafter.”²⁷⁶ While Butler used flowery language to highlight Johnson’s character, he by no means was suggesting that Johnson has a good one. Quite the contrary, Butler argued that Johnson’s violation of the law indicated his deplorable

²⁷³ *Trial of Andrew*, 1: 122.

²⁷⁴ Johnson, *The Great*, 71.

²⁷⁵ *Ibid*, 39; 36.

²⁷⁶ *Trial of Andrew*, 1: 104.

nature overall. Boutwell similarly denounced Johnson's character, arguing that not even the Southerners would say he was a good person, "The respondent will look in vain, even in the South, for any testimonials to his virtues or his public conduct." Boutwell also labeled Johnson as "dishonest and unfaithful." In assassinating Johnson's character and questioning whether he deserved to be removed from office, Boutwell proclaimed, "This trial is a new test of our public national virtue, and also the strength and vigor of popular government."²⁷⁷

In addition to carrying out broad character assassination, the impeachment managers denounced Johnson's character by painting him as "criminally minded." Bingham argued that Johnson was "criminal in his conduct and in his intention."²⁷⁸ Boutwell similarly highlighted that "Mr. Johnson's criminal intent" was evident in "any scheme which Mr. Johnson might undertake." Boutwell contended that Johnson's criminal nature revealed his reprehensible character, "Nothing, literally nothing, can be said in defense of this criminal...In his personal conduct and character he presents no quality or attribute which elicits the sympathy or the regard of men."²⁷⁹ As a criminal with poor character, Johnson was by no means a suitable President according to the impeachment managers.

At this point in the analysis of arguments against Johnson's character lies perhaps the most significant aspect of the trial in relation to classical antiquity -- Boutwell compared Andrew Johnson to the "great political criminal of history," Gaius Verres himself. In discussing how Andrew Johnson set an evil example for the American people, Boutwell proclaimed that Johnson threatened the virtuous people and empowered the criminals, "Under the influence of these examples good men in the South have everything to fear and bad men have everything to hope."

²⁷⁷ Johnson, *The Great*, 38; 35.

²⁷⁸ *Ibid*, 110.

²⁷⁹ *Ibid*, 39; 37.

Just as Cicero argued that Verres brought criminals into government and corrupted the system, so too did Boutwell argue that Johnson tainted the American government as a criminal himself. To illustrate that “there are no limits to the consequences of this man’s evil example,” Boutwell shared a 2000-year-old anecdote about a governor in ancient Rome in front of the American Senate:

Gaius Verres is the great political criminal of history. For two years he was praetor and the scourge of Sicily. The area of that country does not much exceed ten thousand square miles, and in modern times it has had a population of about two million souls...Verres enriched himself and his friends; he seized the public paintings and statues and carried them to Rome. But at the end of his brief rule of two years he left Sicily as he had found it; in comparative peace, and in the possession of its industries and its laws.

Here Boutwell provided Verres as a point of comparison to Johnson. While Johnson did not overtly destroy public property or plunder like Verres, Boutwell claimed, Johnson left the country in a much worse condition than Verres. According to Boutwell, while Verres left Sicily in peace without lasting destruction, Johnson had “inaugurated and adhered to a policy which has deprived the people of the blessings of peace, of the protection of the law, of the just rewards of honest industry. A vast and important portion of the republic, a portion whose prosperity is essential to the prosperity of the country at large, is prostrate and helpless under the evils which his administration has brought upon it.” Boutwell additionally said that while Verres still had friends in Sicily, Johnson no longer had anyone on his side. Boutwell explained, “When Verres was arraigned before his judges at Rome, and the exposure of his crimes began, his counsel abandoned his cause and the criminal fled from the city. Yet Verres had friends in Sicily, and they erected a gilded statue to his name in the streets of Syracuse.” Yet, “this respondent will look in vain” for someone to vouch for Andrew Johnson. Boutwell suggested that Johnson practically destroyed the nation, which sought restoration:

The nation waits in anxiety for the conclusion of these proceedings. Forty millions of people, whose interest in public affairs is in the wise and just administration of laws, look to this tribunal as a sure defense against the encroachments of a criminally minded Chief Magistrate.²⁸⁰

The claim that Johnson did more damage to America than Verres did to Sicily lacks some credence upon a review of Cicero's account of the governor. Verres allegedly left Sicily in a horrible condition, with the agricultural market destroyed, public and private buildings plundered, the census rendered inaccurate, and the judicial system wholly corrupt. Yet, regardless of the reality of Verres' impact in Sicily, one thing is certain--Boutwell was aware of Verres as a fallen public official held accountable by the Roman Senate and used his story as a point of comparison for Johnson's trial to highlight the criminality and poor character of Andrew Johnson. Nowhere in an American impeachment trial is the legacy of impeachment and accountability in Ancient Rome more evident, nor a comparison more direct.

Issue of Expectations in an Office Holder

In addition to attacking the poor character and criminality of Johnson, the impeachment managers, much like Cicero, argued that Johnson did not live up to the expectations of an office holder in American government. The founders had created the role of executive to be the leader of the nation and role model for the American people, but Johnson's behavior in office directly contradicted that vision. Butler described how the President is supposed to be a role model for the nation:

He stands before the youth of the country the exemplar of all that is worth in ambition, and all that is to be sought in aspiration; he stands before the men of the country as the grave magistrate far higher and of greater consequence, he stands before the world as the representative of free institutions, as the type of man whom the suffrages of a free people have chosen as their chief.²⁸¹

²⁸⁰ *Trial of Andrew*, 2: 116.

²⁸¹ *Ibid*, 116-117.

Williams discussed how George Washington set the precedent for future office holders to maintain a high sense of integrity, “The first of our Presidents brought with him into the office an elevation of character that placed him above all suspicion and assured to him a confidence unbounded that it would have been considered entirely safe to vest him with unlimited command.”²⁸² Washington exemplified the kind of leader desired in America--one who is honorable, trustworthy, and law-abiding. Thaddeus Stevens highlighted that Presidents are expected to follow the laws, “To take care that the laws be faithfully executed is and always has been the chief duty of the President of the United States.” Stevens asserted that Andrew Johnson understood these expectations when he swore the oath of office, “When Andrew Johnson took upon himself the duties of this high office, he swore to obey the Constitution and take care that the laws be faithfully executed.” Williams proclaimed that Johnson defied the expectations of office through patronage and disregard of the law, “Was it expected that he should abridge his power to reward his friends or air his own virtue by self-denying ordinances? No!” Protecting the law was Johnson’s “whole duty,” and Stevens asserted that he could not escape that duty, and “any attempt to do so would be in direct violation of his oath.”²⁸³ Johnson’s excessive use of the veto, disregard of advice, and removals of government members all revealed his inability to follow the law and his failure to uphold his oath and duty as President. Stevens suggested that if Johnson cannot live up to the expectation to uphold the law, then Johnson must be removed, for “If he were not willing to execute the laws passed by Congress, let him resign the office which was thrown upon him by a horrible convulsion and retire to his village in obscurity.”²⁸⁴ Butler, rather harshly, stated Johnson was always unsuitable for office because he was never even

²⁸² Johnson, *The Great*, 67.

²⁸³ *Ibid*, 61.

²⁸⁴ *Ibid*, 67; 65.

chosen to be President, “This man was not the choice of the people for the President of the United States, he was thrown to the surface by the whirlpool of Civil War, and careless, we elect to the second place in government without thought he might ever fill the first.”²⁸⁵ The fact that Andrew Johnson failed to live up to the expectations of President is reiterated in almost all of the impeachment charges. Nine of the eleven actual articles of impeachment state in the beginning, “Andrew Johnson, President of the United States...unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution.”²⁸⁶

The impeachment managers additionally argued that Andrew Johnson failed to have the decorum and tact expected in a President, particularly with regard to his speeches against Congress. Butler asserted that if Andrew Johnson was not President, he could act in an unfavorable manner, but the office of President requires higher standards of behavior:

Andrew Johnson, the private citizen, as I may reverently hope and trust he soon will be, has the full constitutional right to think and speak what he pleases, in the manner he pleases, and where he pleases, provided always he does not bring himself within the purview of common law offenses...but the dignity of station, the proprieties of position, the courtesies of office, all of which are a part of the common law of the land, require the President of the United States to observe that gravity of deportment, that fitness of conduct, that appropriateness of demeanor, and those amenities of behavior which are part of his high official functions.²⁸⁷

Butler described how the 10th article of impeachment asserts that Johnson cheapened the presidency through his treatment of Congress, “Article ten alleges that, intending to set aside the rightful authority and powers of Congress, and bring into disgrace and contempt Congress and to destroy confidence in Congress and its laws, Andrew Johnson, President of the United States,

²⁸⁵ *Trial of Andrew*, 1: 119.

²⁸⁶ Edmund G. Ross, *History of the Impeachment of Andrew Johnson: President of the United States, by the House of Representatives, and his Trial by the Senate for High Crimes and Misdemeanors in Office, 1868* (New York: Benjamin Franklin, 1965), 79.

²⁸⁷ *Trial of Andrew*, 1: 116-117.

made diverse speeches set out therein, whereby he brought the office of President into contempt, ridicule, and disgrace.” Butler went on to assert that the issue at hand was whether publicly rebuking Congress lived up to the expectations of office, “whether utterances of his are decent and becoming the President of the United States and do not tend to bring the office into ridicule and disgrace.”²⁸⁸ The impeachment managers cited Johnson’s speeches at Cleveland and St. Louis as evidence, where Johnson allegedly defamed Congress to the public. Reporters and other witnesses testified regarding the President’s behavior at these events. One witness was brought to give a “faithful account of the occasion of the President’s speech in Cleveland.” While Cleveland was a “fit occasion on which [Johnson] was held to the high duty of expressing opinions concerning the legislation of Congress,” the witness “related various portions of the President’s remarks in which he referred to his position in opposition to Congress and radicals,” and claimed “Mr. Johnson said that Congress was trying to break up the government.”²⁸⁹ Emphasizing the contrast between the decorum that was expected from Johnson and how he actually acted at this event, Butler stated, “Tell me now, who can read the accounts of this exhibition, and reflect that the result of our institutions of government has been to place such a man, so lost to decency and propriety of conduct, so unfit, in the high office of ruler of this nation.”²⁹⁰ Butler urged the Senate to recognize that by failing to have the decency, respect, and tact expected in a President, Johnson committed a misdemeanor:

He should be the living evidence of how much better, higher, nobler, and more in the image of God, is the elected ruler of a free people than a hereditary monarch, coming into power by the accident of birth; and when he disappoints all these hopes and all these expectations, and becomes the ribald, scurrilous blasphemer, bandying epithets and taunts with a jeering

²⁸⁸ Ibid, 114; 115.

²⁸⁹ Johnson, *The Great*, 20.

²⁹⁰ *Trial of Andrew*, 1: 119.

mob, shall he be heard to say that such conduct is not a high misdemeanor in office?²⁹¹

Boutwell similarly stated that Johnson performed a misdemeanor by acting contrary to the “good morals” expected in office in his behavior towards Congress. Boutwell asserted, “That no person in office shall do any act contrary to the good morals of office, and that, when any officer is guilty of any act contrary to the good morals of the office which he holds, that act is a misdemeanor for the purpose of impeachment and removal from office.”²⁹² Thus through these accusations, the impeachment managers illustrated that Johnson failed to live up to the expectations of an American President, just as Cicero argued that Verres failed to live up to the expectations of a Roman governor.

While these surrounding arguments present many parallels to Cicero’s arguments, there lies one important difference in the trials: Cicero’s arguments convinced the jury to convict Verres, whereas the Senate’s 35-19 vote acquitted Andrew Johnson and kept him in office. Regardless of the outcome, the trial of Andrew Johnson highlights that the arguments made against an American President in 1868 still resemble the arguments made against a Roman governor in 70 B.C. Public officials evoke similar concerns in governments that serve to protect against tyranny. The impeachment managers communicated that issues of abuse of power, of character, and of expectations of office are central to a charge of impeachment, just like in ancient Rome. Not only does Boutwell’s comparison between Verres and Johnson draw a direct connection between the two officials, but the larger idea that officials are seen as a threat to the state based on abuse of power, seen as unfavorable for poor character, and seen as a failure for

²⁹¹ *Trial of Andrew*, 2: 116-117.

²⁹² Johnson, *The Great*, 65.

not living up to the expectations of office are evident in both trials. In this way, arguments made against officials take a similar tone in trials within both ancient Rome and America.

Chapter Six

The Trial of William Clinton

While Andrew Johnson's disregard of Congress and violation of the Tenure of Office Act reasonably led to political consequences, the next impeachment in American history would result from an illicit affair and cover-up, illustrating that a seemingly less political and more private issue could lead to the impeachment of an American official. Although the House Judiciary Committee recommended the impeachment of President Richard Nixon in 1974, Nixon resigned before he could be impeached, and thus William Clinton became the second President in American history to be impeached in 1999. William Clinton's affair with a White House intern catapulted him into a trial for perjury and obstruction of justice, marking the first time in 130 years that the Senate questioned whether a President should be removed from office. This trial reveals that private acts have grave public consequences for government leaders and that the impeachment power extends beyond actual crimes or historical precedent.²⁹³ Even though the charge itself differed from Johnson, and even Verres, the surrounding arguments, however, took a similar form once again. Before examining the arguments against Clinton, background on his presidency is needed.

Background of William Clinton

On January 20, 1993, William Clinton became America's 42nd president. A sense of hope accompanied his inauguration, as Joseph Hayden highlights that "the belief that the party of 'the people' as opposed to the party of privilege, had triumphed in the election," added to the

²⁹³ Richard A. Posner, *Affair of State: The Investigation, Impeachment, and Trial of President Clinton* (n.p.: Harvard University Press, 2009), 1; 8.

joyousness of the occasion. While Clinton was affiliated with the Democratic party, he rose to power as a moderate and brought together ideas from the Republican and Democratic platforms.²⁹⁴ Clinton described his optimistic plan for the presidency, “I tried to articulate a plan that would reflect basic values, restore the American dream to all our people, rebuild our sense of community in the midst of all the divisions, reform government and rebuild popular confidence in the role of government, and reinvigorate America’s leadership in the world.”²⁹⁵ In many ways Clinton followed through on this “new Democrat” message, making significant contributions to welfare reform, free trade, tobacco regulation, and social issues.²⁹⁶ Analyzing Clinton’s first four years as President, Thomas Patterson found that Clinton made more promises than any prior President and kept a higher percentage of those promises than the past five Presidents before him.²⁹⁷ Dick Morris states, “For its faults, the Clinton administration made a number of significant contributions to American history.” Clinton was an extroverted and charismatic leader, “Whenever he had someone to charm, a voter to meet, a donor to stimulate, a foreign leader to persuade, or a politician to placate, all of Clinton’s energy and charisma became focused on the task at hand.” He was careful to hear the opinions of others before making a decision, and “he sought to surround himself with people who would criticize him, test him, and point out his failings.”²⁹⁸ Yet, despite the positivity surrounding Clinton’s presidency and his promising abilities as leader, Hayden explains, “He was also a man with worrisome personal traits and several gaping political vulnerabilities.”²⁹⁹ Throughout his presidential campaign, first

²⁹⁴ Joseph Hayden, *Covering Clinton: The President and the Press in the 1990s*, online-ausg. ed. (Westport, Conn.: Praeger, 2002), 3; 4; 46.

²⁹⁵ Rosanna Perotti, *The Clinton Presidency and the Constitutional System* (College Station: Texas A & M University Press, 2012), 16.

²⁹⁶ Dick Morris and Eileen McGann, *Because He Could* (New York: Harper, 2005), 33; 35; 39.

²⁹⁷ Perotti, *The Clinton*, 16.

²⁹⁸ Morris and McGann, *Because He Could*, 41; 15; 47.

²⁹⁹ Hayden, *Covering Clinton*, 4.

term, and second term, scandals haunted William Clinton and hindered his effectiveness as President, eventually amounting to an impeachment charge.

Clinton “came into the presidency with some baggage.” When Clinton received an induction notice for the Vietnam War draft in the 1960s, he used personal connections to seek an exemption and circumvent the draft. He only re-entered the draft during graduate school when President Nixon reinstated graduate school deferment, which meant that Clinton could be exempted.³⁰⁰ While Clinton told the *New York Times* that he “put himself back in the draft because he felt a moral obligation after learning that some high school classmates were killed,” Morris counters, “Anyone who looked carefully into his record would know that he had not really subjected himself to draft vulnerability.” When the issue that Clinton received special treatment to evade the Vietnam War draft came to light during his presidential campaign in 1991, Clinton “developed a damage control strategy and evolved tactics that would serve him time after time as he faced accusations and scandal.” In response to accusations of evasion of the draft and special treatment, Clinton’s strategy was to “deny, deny, deny.”³⁰¹ Clinton first said he was lucky, then it was a fluke, then he never got an induction notice, then his uncle may have made calls but this was the first he heard of them, then he knew about the calls but denied every denying he knew.³⁰² As more evidence against him arose, Clinton was forced to retract one statement after another and eventually resorted to blaming the press for focusing on “irrelevant issues about him.”³⁰³ In addition to draft evasion, Clinton experienced other controversies during his campaign and presidency such as marijuana usage, accusations of criminal behavior involving a Whitewater land deal, patronage in the White House travel office, or his

³⁰⁰ Ibid, 4; 5.

³⁰¹ Morris and McGann, *Because He Could*, 131; 133; 135.

³⁰² Hayden, *Covering Clinton*, 140.

³⁰³ Morris and McGann, *Because He Could*, 140.

administration's mishandling of FBI files. Ultimately, all of these controversies would amount to just that--controversy. While Clinton faced no legal repercussions for the aforementioned controversies, accusations of sexual harassment against the President would have major consequences. Termed "bimbo eruptions" by Betsey Wright, allegations of extramarital affairs were Clinton's "most prominent vulnerability during the 1992 campaign and also plagued Clinton during his two terms in the White House."

Clinton had a "penchant for adulterous affairs," and perhaps even more so, lying about them.³⁰⁴ When Gennifer Flowers accused Clinton of a twelve-year affair during his 1992 presidential campaign, Clinton publicly denied the affair.³⁰⁵ Only after Flowers revealed a tape-recorded phone conversation with Clinton that proved she was telling the truth did Clinton admit to "having caused pain in his marriage," hoping to repair the damage and move forward. Hayden states that this acknowledgement "helped Clinton in his campaign but never quite restored his personal credibility."³⁰⁶ On May 6, 1994, Paula Jones filed a sexual harassment lawsuit against Clinton claiming that during his time as governor of Arkansas he summoned her to a hotel room and made inappropriate demands.³⁰⁷ Clinton responded that the lawsuit should be deferred until after his term as President ended, but the Supreme Court unanimously ruled that Jones could proceed with the lawsuit without waiting for the President's term to end (*Clinton v. Jones* 1997).³⁰⁸ This lawsuit was the "seed from which came the President's eventual impeachment by the House of Representatives."³⁰⁹

Paula Jones Litigation

³⁰⁴ Hayden, *Covering Clinton*, 95; 80; 5.

³⁰⁵ Morris and McGann, *Because He Could*, 206.

³⁰⁶ Hayden, *Covering Clinton*, 79.

³⁰⁷ *Ibid*, 80.

³⁰⁸ Impeachment of William Jefferson Clinton President of United States: Report of the Committee on the Judiciary House of Representatives, H.R. Doc. No. 105-105-830, 2d Sess. (7).

³⁰⁹ Hayden, *Covering Clinton*, 82.

Judge Wright, the judge for Jones' case, allowed Jones' lawyers to look into "any history of involvement in sexual relationships with state and federal employees" that Clinton may have had, which opened the door for Jones' lawyers to learn about Monica Lewinsky. When Lewinsky was 21 years old, she began an inappropriate relationship with Clinton in November of 1995 during her time as a White House intern.³¹⁰ While the relationship between Lewinsky and Clinton was "largely dormant" by the time of the Paula Jones case, Jones' lawyers received an anonymous phone call suggesting they subpoena (summon to court to answer questions) Monica Lewinsky and Linda Tripp, who was Lewinsky's confidant in December of 1997. Linda Tripp provided Jones' lawyers with information on Lewinsky's relationship, and the lawyers asked Lewinsky to be a witness for Jones' case.³¹¹ When President Clinton saw Lewinsky on the witness list, he contacted Lewinsky to sign an affidavit denying the relationship. A day after Lewinsky submitted the affidavit, Clinton was deposed by Jones' lawyers on January 17, 1998. During the deposition, Jones' lawyers asked several questions about Lewinsky. Richard Posner explains that from Tripp's information, "The lawyers were primed to question Clinton about Lewinsky at his deposition. Clinton seemed to have been caught off guard by some of their questions. He had been unaware until then that Jones's lawyers knew so much about his affair with Lewinsky."³¹² In this six-hour deposition, Clinton lied under oath, denying any involvement with Lewinsky.³¹³ Clinton said he did not remember if he had been alone with Lewinsky, and, having been provided a definition of sexual relations, denied he had sexual relations with Lewinsky.³¹⁴ The brief later filed by the House Judiciary Committee for Clinton's impeachment

³¹⁰ Impeachment of William Jefferson Clinton President of United States: Report of the Committee on the Judiciary House of Representatives, H.R. Doc. No. 105-105-830, 2d Sess. (7-8).

³¹¹ Hayden, *Covering Clinton*, 82.

³¹² Perotti, *The Clinton*, 21; 22; 24.

³¹³ Hayden, *Covering Clinton*, 84.

³¹⁴ Perotti, *The Clinton*, 25.

states, “Ms. Lewinsky’s false affidavit was important to President Clinton’s deposition, it enabled him to completely deny on January 17 anything of any kind.”³¹⁵ By lying under oath, Clinton “triggered the Starr investigation that led to his impeachment.”³¹⁶

Independent Counsel Kenneth Starr had been investigating Clinton’s potential Whitewater criminal activity and learned of possible obstruction of justice in the Paula Jones case. With the guidance of Jones’ Lawyers, Linda Tripp gave the Independent Counsel’s office all of the information she had about Lewinsky and tapes of conversations with Lewinsky about her relationship with Clinton.” The Lewinsky scandal pervaded the media, and Clinton “emphatically, repeatedly, and unequivocally denied, both publicly to the nation and privately that he had any improper contact with Lewinsky.”³¹⁷ Hayden writes that “Clinton did his best to pretend there was no scandal.” Hillary Clinton even publicly stated on NBC, “The great story here for anybody willing to find it and write about it and explain it is this vast right-wing conspiracy.”³¹⁸ As the Clintons denied the Lewinsky affair, Starr’s team “conducted a meticulous investigation” and worked with Lewinsky to learn more information in exchange for granting her immunity for lying in the affidavit. In August of 1998, Lewinsky testified for the Independent Counsel that she had a sexual relationship with Clinton and provided DNA evidence that corroborated with her story.³¹⁹ With DNA evidence against him, Clinton conceded on national television and testified before a grand jury on August 17, 1998 that he had an “inappropriate” relationship with Lewinsky. He claimed that the relationship did not encompass the definition of “sexual relations” and thus denied having lied under oath.³²⁰ With Clinton going back on his

³¹⁵ Impeachment of William Jefferson Clinton President of United States: Report of the Committee on the Judiciary House of Representatives, H.R. Doc. No. 105-105-830, 2d Sess. (19).

³¹⁶ Morris and McGann, *Because He Could*, 190.

³¹⁷ Perotti, *The Clinton*, 25; 24; 37.

³¹⁸ Hayden, *Covering Clinton*, 85.

³¹⁹ Perotti, *The Clinton*, 27.

³²⁰ *Ibid*, 29.

word, Hayden describes, “It was an unprecedented embarrassment for the White House” and a historian writes, “It is hard to find a case where a president has said something that was deliberately false to the American people, and when proven false, had to backpedal.”³²¹

Following an “eight-month national spectacle that held Washington up to ridicule on the world stage,” Kenneth Starr presented his findings in the “Starr Report” to the House of Representatives on September 9, 1998. The Starr Report depicted the encounters of Lewinsky and Clinton and provided all of the evidence Starr’s team had accumulated against Clinton. No report had ever been produced for the American government to this nature about a President. Starr said he had “no choice but to include blunt descriptions” because Clinton “continued to deny he had sexual relations with Lewinsky as defined in the Paula Jones case.”³²² Starr claimed that convincing evidence in the report indicated that the President committed impeachable offenses.³²³ The Starr Report involved eleven counts of possibly impeachable offenses: “four allegations of perjury in his January 17 deposition, one charge of perjury in his August 17 grand jury testimony in the Starr investigation, four counts of obstructing justice, and one of witness tampering and one of abuse of office.”³²⁴ The House held four hearings and questioned Starr, eventually voting on December 19, 1998 to approve two articles of impeachment. The articles can be summarized as follows:

Article One: The President willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice in that he willfully provided perjurious, false and misleading testimony to a federal grand jury on August 17, 1998.

Article Two: The President has prevented, obstructed, and impeded the administration of justice and engaged in a course of conduct or scheme designed

³²¹ Hayden, *Covering Clinton*, 90.

³²² Kenneth Starr, *The Starr Report: The Findings of Independent Counsel Kenneth W. Starr on President Clinton and the Lewinsky Affair* (New York: Public Affairs, 1998), X; XI.

³²³ Hayden, *Covering Clinton*, 93.

³²⁴ Starr, *The Starr*, XI.

to delay, impede, cover up, and conceal the existence of evidence and testimony related to a federal civil rights action brought against him.³²⁵

The House of Representatives appointed Henry Hyde, Jim Sensenbrenner, Bill McCollum, George Gekas, Charles Canady, Steve Buyer, Ed Bryant, Steve Chabot, Bob Barr, Asa Hutchinson, Chris Cannon, James E. Rogan, and Lindsey Graham to serve as impeachment managers. From January 14 to January 16, the thirteen impeachment managers argued to convict and remove Clinton from the presidency during the Senate trial. These arguments provide another opportunity for analysis of rhetoric against a President in an impeachment trial. While the arguments are grounded in the charges of perjury and obstruction of justice, once again, surrounding arguments encompass issues seen before in the trial of Verres and Johnson: abuse of power, character, and expectations of an office holder.

Issue of Abuse of Power

The impeachment managers argued that Clinton abused his power as President to maintain his reputation and mitigate the damage from the scandals. In response to the lawsuit, Clinton took advantage of the fact that he was President at the time and tried to avoid any repercussions, as Lindsey Graham proclaimed, “What did our President do? He tried to say, ‘You can’t sue me because I am President.’”³²⁶ Furthermore, Clinton’s lack of cooperation with the Paula Jones case was an encroachment of the powerful on the weak, an offense that Sensenbrenner labeled as “when a poor or powerless person seeks the protections of our civil rights from the rich and powerful.” In order to discredit Lewinsky, Clinton exploited his authority as President, according to the impeachment managers. The brief states, “The President employed the full power and credibility of the White House and its press corps to destroy the

³²⁵ Proceedings of the United States Senate in the Impeachment Trial of President William Jefferson Clinton, S. Doc. No. 106-106-4, 1st Sess. (2000), 785.

³²⁶ *Ibid*, 1162.

witness” so that the public would be convinced that Monica Lewinsky was “unworthy of belief.” Clinton was willing to use his position of power to defame Lewinsky, and the brief describes the malicious atmosphere, “Inside the White House, the debate goes on about the best way to destroy ‘That Woman,’ as President Bill Clinton called Monica Lewinsky.”³²⁷ The brief argues that Clinton spread rumors about Lewinsky and trusted that he would be believed over his subordinate because he was President. The brief likens this abuse of presidential power to how Clinton handled the case of Paula Jones, “This sounds familiar because it is the exact tactic used to destroy the reputation and credibility of Paula Jones,” but, “The difference is that these false rumors emanated from the White House, the bastion of the free world, to protect one man from being forced to answer for his department in the highest office in the land.” The President additionally abused his power by attempting to silence Lewinsky by obtaining a job for her. Hutchinson explained how the President pulled strings and compelled her to sign an affidavit, “He made things happen. Monica Lewinsky got a job. The affidavit was signed, and the President was informed that the mission was accomplished.”³²⁸

The impeachment managers also argued that by lying under oath and obstructing justice, the President wielded more power for himself than given in the Constitution and acted as if he was “above the law.” The brief mentions that Clinton’s “flagrant abuse of power” was “damaging to the integrity of government.” Sensenbrenner established, “We are here today because President William Jefferson Clinton decided to put himself above the law--not once, not twice, but repeatedly during the Federal civil rights case of Paula Corbin Jones versus William Jefferson Clinton.” More specifically, Clinton “put himself above the law when he made perjurious, false, and misleading statements under oath during his grand jury testimony on

³²⁷ Ibid, 1013; 806.

³²⁸ Ibid, 807; 1043.

August 17, 1998. Buyer argued that Clinton hoped to use the power of the President to create his own definition of “sexual relations,” stating that Clinton “simply assumed unto himself that he had by virtue of his power special privileges that he could be clever, create his own definitions of the words in his own mind.”³²⁹ Sensenbrenner explained the consequences if the Senate refused to check Clinton’s abuse of power and actions above the law, “If there is no accountability that means a President can set himself above the law for 4 years, a senator for 6, a representative for 2, and a judge for life. That poses a far greater threat to the liberties guaranteed to the American people by the Constitution than anything imaginable.” McCollum urged that the Senate make Clinton an example that even the President does not have so much power as to act above the law, “Senators, let us instead send a message to the American people and to the boys and girls who will be studying American history in the years to come that no person is above the law.”

Sensenbrenner asked that Clinton be made into an example that the President should follow the law, “Parents should be able to tell their children that even if you are President of the United States, if you lie when sworn to tell the truth, you will face the consequences of that action even when you won’t accept the responsibility for it.”³³⁰ Hyde stated that the laws were made to protect against this abuse of power, “This is about the rule of law--the great alternative to the lethal abuse of power by the state.” The managers argued that the purpose of impeachment was to protect against a President who acts above the law--to protect against tyranny. Sensenbrenner explained the origins of impeachment, as discussed in Chapter Four, “The framers of the Constitution devised an elaborate system of checks and balances to ensure our liberties by making sure that no person, institution, or branch of government became so powerful that a

³²⁹ Ibid, 814; 1009; 1158.

³³⁰ Ibid, 1021; 1120.

tyranny could ever be established in the United States of America.”³³¹ If a President were to abuse the power given to the executive, “Impeachment is one of the checks the framers gave to Congress to protect the American people from a corrupt and tyrannical executive or judicial branch of government.” Graham called for the Senate to take action to check Clinton’s abuse of power, “You know the remedy to resolve problems like when the Presidential conduct gets out of bounds? It lies with us, Congress. When a President gets out of bounds...it is up to us to put them back in the bounds or declare it illegal.”³³² These arguments of the abuse of power shed light on the purpose of impeachment which harks back to accountability in the mixed government of ancient Rome. Just as Verres was placed on trial for acting like a tyrant and abusing his power as governor, so too is Clinton accused of wielding too much power for himself and acting above the law, albeit in a much milder way. 2100 years later, members of government are still sensitive to executives acting with too much power or seemingly abusing the power given in an office.

Issue of Poor Character

Furthermore, the impeachment managers publicly questioned the character of Clinton in arguing for his removal, which illustrates that character continued to be valued in an impeachment trial. Graham provided the importance of the issue of character, “This is a country based on character, this is a country based on having to set a standard that others will follow.” Graham argued that Clinton crossed the line in terms of having such poor character, emphasizing Clinton’s selfishness and self-centeredness, “Human failings exist in all of us. Only when it gets to be so premeditated, so calculated so much ‘my interest over anybody else’ should you really, really start getting serious about what to do.” The brief argues that while the Paula Jones case tested Clinton’s character, “It was, however, a test of courage, honor, and integrity to enforce

³³¹ Ibid, 1193; 1010.

³³² Ibid, 1162.

rights against yourself,” Clinton did not demonstrate good character, “The President failed that test.” Clinton’s failure to maintain good character “affects the moral and law-abiding fiber of the commonwealth, without which no nation can survive.”³³³ Clinton’s poor character hindered his leadership ability, as Buyer articulated, “Leadership is the core of the issue before us. In order to be an effective leader...the President must exhibit traits that inspire...these traits include honor, integrity, and accountability.” Graham argued that if Clinton stayed in office, he would not be a quality role model, “How can we say to our fellow citizens that this will not be 20 months of ‘don’t do as I do, do as I say’? What effect will that have? I think it would be a devastating one.”

While the impeachment managers claimed that this trial was not a matter of private conduct or an illicit affair, they still highlighted the affair in their arguments, undoubtedly presenting Clinton in an unfavorable light and reflecting his poor character for the Senate. Buyer stated, “Lying to one’s spouse about an extramarital affair is not a crime; it is a private matter. But telling the same lie under oath before a federal judge, as a defendant in a civil rights sexual harassment lawsuit is a crime against the state and therefore a public matter.”³³⁴ If Buyer truly wanted to keep the “private matter” of Clinton’s lying to his wife private, Buyer would not have mentioned it. Sensenbrenner also clarified that this trial is not about the relationship, “It is not about the President’s affair,” but still called out the President’s immorality for having an affair, “an affair that was both inappropriate and immoral.” He then shamed Clinton and applauded the President in recognizing his poor conduct, “Mr. Clinton has recognized that this relationship was wrong. I give him credit for that.” Hyde similarly highlighted Clinton’s wrongdoings under the guise of claiming that those actions were “none of our business.” Hyde stated, “The case before you senators is not about sexual misconduct, infidelity, or adultery--those are private acts.”

³³³ Ibid, 1165; 1163; 808; 809.

³³⁴ Ibid, 1155; 1168; 1147.

Bryant said he will not go into any detail about the encounters of Lewinsky and Clinton, yet provided a chart to the Senators that depicted the 21 encounters from 1995 to 1997, highlighting the “so-called salacious encounters in the workplace.”³³⁵ These impeachment managers still brought attention to Clinton’s adultery despite claiming otherwise. These remarks ring to the tune of Cicero saying he will not take time to mention the illicit behavior of Verres, but in doing so, still highlighted Verres’ illicit behavior. While issues of character could never justify an impeachment, these arguments still worked to defame Clinton at the trial.

The impeachment managers sometimes more overtly denounced Clinton’s behavior towards women in the trial. McCollum highlighted Clinton’s misconduct towards women, “The President engaged in a pattern of illicit relations with women in his employment, where he rewarded those who became involved with him and disadvantaged those who rejected him.” The brief draws a connection to the President’s character and the affair, “The manner in which the Lewinsky relationship arose and continued is important because it is illustrative of the character of the President and the decisions he made.”³³⁶ Sensenbrenner alluded to the lack of trust in Clinton’s marriage, “When someone lies about an affair and tries to hide the fact, they violate the trust their spouse and family put in them.” Rogan addressed how inappropriate the relationship between Clinton and Lewinsky was, especially given her age, “The concept of a President having a sexual relationship in the White House with an intern less than half his age was a public relations disaster for the President...It is clear that the President somehow viewed the concept as less combustible if he could take the ‘young intern’ phrase out.” Barr highlighted the unseemly power dynamic in this relationship, “We are dealing here with the President of the United States

³³⁵ Ibid, 1010; 1188; 1030.

³³⁶ Ibid, 1093; 785.

of America and a subservient employee.”³³⁷ Rogan went on to emphasize Clinton’s improper behavior, “The very day the President met and spoke with a young White House intern for the first time was the day he invited her back to the Oval Office to perform sex acts on him.” Rogan even suggested that the President was callous towards Lewinsky, “Monica Lewinsky said that after their sexual relationship was over a month old, she didn’t even think the President knew her name.” Barr similarly called Lewinsky “an unknown intern” who the President “kissed and invited back to return later that day, when the two engaged in the first of 11 acts of misconduct.” These mentions of Clinton’s misconduct or coldness towards Lewinsky did not bolster the charges of perjury or obstruction of justice, but rather demoralized Clinton in front of the Senate.

The impeachment managers also attacked Clinton as a “liar” and a man who cannot be trusted to further illustrate that the President lacked good character and should be removed. Hutchinson proclaimed that Clinton “used lies, deceit, and deception.”³³⁸ Hutchinson went on to say, “Let me take this a step further and evaluate the credibility of the President,” to suggest that Clinton’s credibility had been “seriously diminished.” McCollum highlighted the President’s bad intentions in lying, “His intention, in that deposition was to be untruthful. That is what it was all about, to be untruthful.” McCollum argued that Clinton “lied numerous times before the grand jury. He lied numerous times under oath,” before proclaiming, “This is about a lot of lies.”³³⁹

The brief states that Clinton’s lies threaten the nation:

His honesty and integrity directly influence the credibility of this country. When, as here, the spokesman is guilty of a continuing pattern of lies, misleading statements and deceptions over a long time, the believability of any of his pronouncements is seriously called into question. Indeed how can anyone in or out of our country any longer believe anything he says? And what does that do to the confidence in the honor and integrity of the United States?

³³⁷ Ibid, 1013; 1067; 1132.

³³⁸ Ibid, 1068; 1030; 1045.

³³⁹ Ibid, 1057; 1106; 1108-1109.

Buyer emphasized that impeachment was suitable for such a case, setting forth that impeachment serves as the redress for an official who lacks good character, “We recognize that no person has perfect virtue and that we each have our human failings. The founders could foresee a time when corruption could invade the institutions of government, and they provided the means to address it. The impeachment proceeding is one such means.”³⁴⁰ These arguments highlight that strong character is a crucial aspect in a leader, whether in an Roman governor or in an American President, and calling out Clinton’s shortcomings in character created a stronger case for his removal.

Issue of Expectations in an Office Holder

A major aspect of the impeachment managers’ surrounding arguments also lies in that Clinton failed to live up to expectations of an American President, just as in the previous impeachment trials. The brief highlights that the office of the President embodies the ideals and reputation of the nation:

The office of the President represents to the American people and to the world, the strength, the philosophy, and most of all, the honor and integrity that makes us a great nation and an example for the world. Because all eyes are focused upon that high office, the character and credibility of any temporary occupant of the Oval Office is vital to the domestic welfare of the citizens. Consequently, serious breaches of integrity and duty of necessity adversely influence the reputation of the United States.³⁴¹

Bryant similarly emphasized that the President serves as a model for America, “The Presidency is more than an executive responsibility. It is the inspiring symbol of all that is highest in American purpose and ideals.” Sensenbrenner explained the expectations of all office holders to maintain a high level of conduct, “When each of us is elected or chosen to serve in a public office, we make a compact with the people of the United States of America to conduct ourselves

³⁴⁰ Ibid, 808; 1159.

³⁴¹ Ibid, 785.

in an honorable manner, hopefully setting a higher standard for ourselves than we expect for others.” Bryant urged the Senate to remember that the President swore to uphold these duties and expectations of office, “On that very day and again in January of 1997...he became only the 42nd person in our nation to make the commitment to ‘faithfully execute’ the office of the President and to ‘preserve, protect, and defend the constitution.’ As we progress throughout the day, I would ask that you be reminded of the importance of that oath.”³⁴² The brief emphasizes that when the President fails to act in accordance with the expectations of office, the nation is damaged, “The conduct of the President is inextricably bound to the welfare of the people of the United States...When, as here, that conduct involves a pattern of abuses of power, of perjury or deceit, of obstruction of justice and of the Congress, and of the other illegal activities, the resulting damage to the honor and respect due to the United States is devastating.” Article I provides that Clinton deserves removal because he failed to act in the manner expected in a President:

William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency...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 and office of honor, trust, or profit under the United States³⁴³

Hyde emphasized the consequences of an unworthy President remaining in office, “The framers also knew that the office of President of the United States could be gravely damaged if it continued to be unworthily occupied.” Buyer asked the Senators to restore the high standards of office by removing Clinton, “Should the Senate choose to convict, it would be reinforcing high standards for high office and maintaining existing precedents.” Canady similarly demonstrated that the purpose of removal is to maintain the expectations of office holders, “The removal

³⁴² Ibid, 1016; 1021; 1025.

³⁴³ Ibid, 809; 776.

power is designed to preserve, protect, and strengthen our Constitution by setting a standard of conduct for public officers. The Senate should not allow a President who has violated his constitutional duty and oath of office, and made himself a notorious example of lawlessness, to remain in office.”³⁴⁴

The impeachment managers argued that Clinton had a constitutional duty to uphold the law, and in lieu of breaking the law, should be removed. The brief explains the precedent that the President must uphold the law, “Our founders decided in the Constitutional convention that one of the duties imposed upon the President is to ‘take care that the laws be faithfully executed.’” Sensenbrenner argued that Clinton’s behavior in office completely goes against his responsibility to uphold the law, “The President’s misconduct is contrary to his constitutional public responsibility to ensure the laws be faithfully executed.” Buyer stated that Clinton repeatedly broke the law, “The house is prepared to establish that the President, William Jefferson Clinton, willfully and repeatedly violated the rule of law.”³⁴⁵ While Bryant recognized that people make mistakes, he stated that human flaws do not excuse a President from breaking the law,

We are electing people who are imperfect and have made mistakes in life but who are willing to so respect this country and the office of the President that he or she will now lay aside their own personal shortcomings and have inner strength to discipline themselves sufficiently that they do not break the law which they themselves have sworn to uphold.

Buyer argued that the Senate cannot allow the President to disregard his duty to uphold the law, “Our President, who alone is delegated the task under our Constitution to ‘take care that the laws be faithfully executed’ cannot and must not be permitted to engage in such an assault on the administration of justice.”³⁴⁶

³⁴⁴ Ibid, 1191; 1155; 1169-1170.

³⁴⁵ Ibid, 808; 1010; 1147.

³⁴⁶ Ibid, 1025; 1154.

The President was expected to maintain trust with the nation, the impeachment managers argued, and Clinton broke the trust by lying repeatedly and thus failing to carry out another duty as President. Sensenbrenner illustrated the precedent that office holders are expected to maintain trust, “Throughout the years, America’s leaders have tried to earn the trust of the American people, not by their words but by their actions. America is a place where government exists by the consent of the governed, and that means our Nation’s leaders must earn and re-earn the trust of the people with everything they do.” Sensenbrenner argued that the public trust is harmed every time an official makes a mistake in office, “Whenever an elected official stumbles, that trust is eroded and public cynicism goes up.” This erosion of trust damages the effectiveness of the government, “The more cynicism that exists about government, its institutions, and those chosen to serve in them, the more difficult the job is for those who are serving.”³⁴⁷ The brief states that the major issue at this trial was trust: “Whether Clinton acted in a manner contrary to his trust as President.” Hyde proclaimed that Clinton repeatedly violated the trust and failed to uphold the duty of President, “Numerous Senators are convinced that he has ‘egregiously failed’ the test of his oath of office, ‘violated the trust of the American people,’ and dishonored the office which they entrusted him.”³⁴⁸ Buyer explained that the President failed to maintain trust by selfishly placing his own considerations over that of the nation, “The articles of impeachment adopted by the House of Representatives establish an abuse of public trust and betrayal of the social contract in that the President alleged to have repeatedly placed his personal interests over the public interest and violated his constitutional duties.” Sensenbrenner emphasized that the President must be held accountable for violating the trust, “A public office is a public trust...when someone breaks that trust, he or she must be held accountable and suffer the

³⁴⁷ Ibid, 1022; 1024.

³⁴⁸ Ibid, 786; 1191.

consequences for the breach.” Bryant argued that the consequences for a President violating the trust are impeachment and removal, “In view of the enormous trust and responsibility attendant to his high Office, the President has a manifest duty to ensure that his conduct at all times complies with the law of the land...perjury and obstruction of justice...are grounds for conviction and removal from his office.”³⁴⁹ Sensenbrenner similarly emphasized that officials must be held accountable through impeachment, “Impeachment is necessary to maintain the public’s trust in the conduct of their elected officials, such as myself and ourselves, who through our oaths and office have a duty to follow the law, fulfill our constitutional responsibilities, and protect our Republic from public wrongdoing.” The impeachment managers argued that Clinton must be held accountable to restore the trust in office holders, “Our legacy now must not be to lose the trust the people should have in our nation’s leaders.”³⁵⁰

Through these surrounding arguments, the impeachment managers demonstrated that more issues are involved in an impeachment charge than merely the alleged crime. The impeachment managers, in addition to the American people, are concerned about leaders who threaten the state through abuse of power, who do not have good character, and who do not live up to the expectations of office. These concerns hark back to ancient Rome and are still prevalent today. Ultimately, the Senate voted 55-45 not to remove Clinton from office, but the President still serves an example of a leader who acted contrary to what Americans want in a President and what the Constitution demands.

Conclusion and Further Work

This thesis has shown that not only is the constitutional framework for the American government partially classical in origin, but also the function of impeachment within government

³⁴⁹ Ibid, 1155; 1021; 1037.

³⁵⁰ Ibid, 1010; 1024.

and arguments against officials are similar to those of ancient Rome. The trials of Gaius Verres, of Andrew Johnson, and of William Clinton offer ample evidence to support the notion that similar rhetorical strategies were employed in ancient Rome as in America. These trials not only present the type of official that would be deemed worthy of punishment in both governments, but also the arguments made against these officials. This thesis would be amiss, however, to not mention the most recent impeachment trial of Donald Trump in 2019. This trial presents another opportunity for analysis of the function of impeachment and arguments made against officials. Over time, as more scholarship is produced surrounding President Trump and the mechanics of his impeachment, further work could be made regarding the arguments of his trial. Without going into too much detail, it is worth noting some elements of the trial that serve as valuable points in analysis of impeachment from ancient Rome to America.

It is worth noting that at the time of Gaius Verres' trial, there was no media like today. No news networks, talk shows, or magazines could publicly denounce an official like the media does so often in modern day America. This phenomenon became particularly prominent during President Clinton's impeachment, as the media played a major role in publicly shaming the President for his illicit affairs and interactions with women, which served no legitimate purpose beyond humiliating the President and presenting him in the most unfavorable light possible for the nation. Perhaps more than ever, the media strongly criticized the character of President Trump and shamed him in the news. Trump's involvement with women, questions of racism, or presentations of poor character were highlighted by the media throughout his candidacy and time in office. These exploitations of private life and attacks on character work to defame the President in the same way that Cicero did in the trial of Gaius Verres. Even articles from *Forbes* like "Could Donald J. Trump Become America's Caesar?" present the President as tyrannical

and a threat to the state in the media, relying on the classical allusion to Julius Caesar who became a dictator in the Roman empire. The development of the media marks a strong departure from the politics surrounding officials in ancient Rome. Cicero functioned in effect as the sensationalist media and the impeachment manager in the trial of Gaius Verres, attacking Verres' character and private misconduct, in addition to highlighting his crimes in office throughout his speeches. Cicero exposed aspects of Verres' private life in the same way the media does for politicians in the modern day. This distinction offers an opportunity for scholarship to look into how the media has moved into a role that was virtually not present in classical antiquity. Character assassination of officials are frequent in America, a tactic that can be traced back to ancient Rome. In the modern day, however, those attacks are more frequent in the media than in a trial. Impeachment trials have become more formal, as impeachment managers rarely rely on overt *ad hominem* attacks or vivid descriptions of inappropriate behavior. Yet, as evidenced by the trials of Andrew Johnson and William Clinton, nevertheless, attacks on the character of an official are still employed in trial, though few and far between.

Another point worth mentioning regarding Donald Trump's impeachment trial is that the issue of "honor," or at least reputation, which finds its roots in ancient Rome, came to light during this impeachment. While the Senate was dominated by Republicans, and not likely to vote to convict the Republican President, the Democrats in the House still voted to impeach Trump, not only because they believed he deserved it, but also to hurt his reputation or prospects for re-election. The Democrats most likely knew that the Senate would not vote to remove Trump, but still followed through on his impeachment in part to hurt his reputation as President. Impeachment no doubt can taint an official's career in America, just as it did in ancient Rome. While no opinion can be given as to whether this impeachment truly hindered his prospects for

re-election, the impeachment was still a well-covered story in the media and will become a debated topic among scholars. The impeachment of Donald Trump served to harm his political reputation, which embodied the sort of loss of honor or humiliation from removal in the Roman Republic.

More scholarship is needed to analyze the actual arguments of the President Trump's trial, but without a doubt, America continues to share a resemblance to ancient Rome regarding the function of impeachment and arguments made against officials. Our government with separation of powers and checks and balances serves a very important purpose to protect against tyranny, and when officials harm that goal, impeachment is used, just as it was in ancient Rome, to protect the state. Within this government that is partially rooted in ancient Rome, we continue to attack officials in a similar manner to classical antiquity. While the Roman Republic ended a while ago and Latin is a "dead" language, aspects of impeachment and government in ancient Rome are still very much alive in America today.

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