

On Public Trust and the Abuse of Power

Reflections on the Clinton Impeachment (February 1999)

By S. J. Hatch

One benefit of a society learning nothing from history is that for those who missed it the first time around can always relive it on the rebound. In this case, for those too young to remember Watergate, the impeachment and trial of William Jefferson Clinton offers a repeat performance. With the past as precedent, the Senate's acquittal of the President on charges of perjury and obstruction of justice will bring a lot of duly solemn talk about "our national nightmare being over" and about the "need for the healing to begin." The usual suspects on the television networks, the print media, and the Internet will propound the obligatory "lessons learned" from the case, just as they did after the O.J. Simpson trial, the Los Angeles riots, the Iran-Contra affair, and, of course, Watergate. Picking up on these "lesson learned" Congress will start bandying around proposals for reform so that something like the Clinton trial can "never happen again." Like those reforms that Congress enacted in the wake of Watergate, they probably will create more problems than they will fix, but—for a moment anyways—they will satiate the American propensity for passing laws to 'fix' every conceivable foible of human beings. Before we start trying to 'fix' the system though, we need to take a broader look at what has just happened. The results of the Clinton episode are not ones amenable to the policy type solution that the working establishment in Washington tends to favor but are far deeper and more difficult to address. To try to remedy these with a policy fix would be akin to putting a Band-Aid on a major gash.

A Culture of Cynicism

That the problems of the Clinton case indicate a deeper, more culturally situated problem in the American body politic has not been absent from the recent debates. The President's defenders in Congress have posited that the "witchhunt" of Independent Counsel Kenneth Starr will trigger similar inquisitions against future Presidents and other public officials. In the short term, the opposite is more likely to be the case. Having gone through such an intensive process for such an inconclusive result, the Republicans are hardly likely to push any further investigations of the President or officials of his Administration, regardless of their intrinsic merit. This is especially true in light of the backlash that the Party suffered in the 1998 mid-term elections, when it was popularly perceived that the GOP tried to use the impeachment issue for electoral gains. At the same time, the Democrats can hardly use the character issue against their opponents without incurring the charge of hypocrisy. Indeed, that is already evident, given the fact that improprieties which the Democrats claimed made Republicans such as Bob Packwood and Clarence Thomas unsuitable for office have been noticeably forgotten in their own defense of President Clinton.

If this reticence against *ad hominem* attacks leads to a greater sense of decorum in political life and a willingness to constructively focus our disagreements on the substance of the issues, then that would be a welcome improvement. More likely it will lead to a bipartisan willingness to tolerate corruption on both sides of the aisle, except in the most egregious and legally indefensible of cases when the politician in question was not shrewd enough in covering his or her misdeeds. In some respects, that is simply a return to earlier eras in American politics. In the past, the American public may have tolerated such situations largely out of naiveté, ignorance, and even blind faith in American exceptionalism. If the American public tolerates such situations today it is largely out of a sense of cynicism and apathy. And *that* is poisonous to the practice of self-government and to the American body politic.

Polls since the beginning of the Lewinsky affair show that a majority of the public believe: a) that the President's policies are generally appropriate; b) that the President is personally corrupt and probably guilty of those things which he has been accused; and c) nevertheless should not be removed from office for his misdeeds. The current conventional wisdom has interpreted these polls to either of two ends: to argue that the public vindicates the President or to assert that the public is strictly materialistic and is indifferent to the ethics of its officials. Taken in their totality, however, the polls show a public that is has been demoralized by cynicism. Generally speaking, the sentiment is that "If all politicians are corrupt, then the President is no different than any other politician. Since we cannot expect our politicians to act ethically, morally, and with the integrity of their convictions about all we can expect is for them to keep the benefits coming."

In fairness, this cynicism did not emerge solely as a result of the Lewinsky affair. Political observers have extensively documented the fact that in the last thirty years there has been a significant drop off in the degree of political engagement and voter participation by the American people. The most recent example of this was seen in the even lower than usual turnout for the 1998 mid-term Congressional elections, but voter turnout in Presidential elections have been declining steadily for the last several decades. Participation is even worse,

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of course, in local politics and elections. All this has come about, despite the fact that voting has become significantly easier and political involvement has been made to be more accessible to the populace.

The reasons political scientists attribute for this decline seem to be directed everywhere else save for the most obvious: people participate less in government when they have less faith in that government. It is no accident that the fall off in public political participation coincides with growing distrust of government which began during the Cold War and received catalysts from Richard Nixon's abuses of power in the 1970s and from Congress' repeated unwillingness to do more than wrist slap its own members for ethical misconduct if and when it punishes them at all. Unlike lawyers and political partisans, the general public does not spend time examining the technical guilt or innocence of their political officials in each and every case. Basing their opinions on impressions formed from broadcast news, most of the public long ago concluded that all their public officials are crooks. Cynicism has defined expectations downward.

Even though cynicism has been building for some time, it nonetheless will be strongly reinforced by the Clinton example. The President's defense strategy in the Lewinsky affair has been: to admit nothing; to delay continuously in releasing information until compelled under subpoena; to deny everything, unless it already has been corroborated by independent sources; to make counteraccusations and insinuations against the President's prosecutors; to confuse the issue where possible; and in the final analysis, to appeal for clemency. This approach has been consistent with the way in which the Administration has handled other issues for which it has been investigated and underscores a commitment to hold onto the office regardless of the cost. Indeed, this legalistic approach—more so than his actual infidelity or the legal accuracy of his testimony under oath—probably has done more to spur on his enemies than any other single reason. *Prima facie* evidence of that is the luridness of Ken Starr's report, which attempted to prove perjury to the President's own legalistic definitions of sexual intercourse. To the even President's enemies, the Lewinsky affair may not be the most serious of the President's misdeeds, but it is the most legally provable.

Yet even this attitude demonstrates the degree to which our politics have become poisoned. Actions that even five years ago would have shamed most politicians to resign for the good of the office because of the appearance of impropriety now will only move them to leave office if it can be proved beyond a reasonable doubt in a court of law. This only benefits those possessing raw ambition. To challenge such officials and to hold them accountable for their actions requires tremendous financial and legal resources, the likes of which already are and will continue to be fueled primarily by single-issue lobby groups and by special corporatist interests. Over the longer term such challenges will only escalate political vendettas and enhance a ruthless approach to politics that already is driving from the political arena most people of integrity. If unchecked,

such trends will significantly erode the popular legitimacy of government—perhaps not in the next few years but certainly within the next couple of decades.

The Wrong Kind of Moral Debate

This cynicism has only been reinforced by the confused debate over the morality and public office that emerged in the Clinton case. The Lewinsky affair should have been an opportunity to open a constructive debate on personal morality and professional integrity in the public arena. Unfortunately, the moral debate instead has become mired in simplistic categories, which the public knows masks a more complex reality. The Administration, for example, has tried to argue that the Lewinsky case is simply about adultery. This has succeeded only in muddying the waters in the public's mind. Most people recognize that we cannot expect our leaders to be paragons of virtue, particularly in a democracy when ordinary citizens themselves are far from perfect. There is also the sense that, in our media-satiated age, we should allow our officials some space for their private lives (although we rarely grant them that). In addition, there is the moral distinction that many have picked up on that in a case of adultery, the primary victim is the spouse who has been betrayed, not necessarily the public at large. At the same time, however, to dismiss this case on the basis that it is a private matter is to concede too much. It would ignore how the President tried to use his subordinates to conceal his misdeeds. Moreover, there still lingers in the American consciousness a sense in which the abuse of power for personal ends is less justifiable than for policy ends.

The President's Congressional critics have engaged in less sophistry but have not brought much more light to the issue. They retort that the central issue of the case is one of honesty with the public. In their view, the President brazenly lied about his affair, not only to the public but also to a Grand Jury and therefore is not fit to hold office. This reasoning attempts to get at the valid issue of trust between the public and its representative officials but it is far from airtight. The media focus and the thrust of the debate has tended to view these actions in isolation, unique to the Lewinsky affair. Because of this, and because the memory and attention span of most Americans tends to be quite short, there is a fair amount of discomfort with the idea of removing a sitting official from office on such a "one-time" charge. A person's statements, generally speaking, are not typically evaluated in isolation; they are weighed against the broader context of that person's dealings with other people. If such a person demonstrates a consistent pattern of lying, evasiveness, shading the truth, and so on in his or her public or private life, then the likelihood that he or she will do the same in other aspects of life increases significantly. Evaluations of the President's trustworthiness over the years has declined not simply because of the Lewinsky case but because he has consistently been less than honest and forthright in both personal and political matters.

Because of the way the White House and the opposition have framed the key issues of the Lewinsky affair, moral confusion among the American public is understandable. Is sexual fidelity more important than honesty or vice versa?

How faithful or honest does one have to be in order to hold office? And how will these categories help us in thinking through the next scandal that happens to come along? Answers to these questions will involve making some fine – and in many cases, abstract – moral distinctions if they can even be made at all. For most Americans, that is too difficult and so they have given up trying to reason morally about this case altogether. The result is yet another milestone in defining expectations for public office downward.

Rediscovering Public Office as a Trust

The answer to the Lewinsky case, however, is not to dispense altogether with the idea that moral reasoning has a legitimate role in evaluating a political official's fitness for office. Rather, the answer is to reason correctly. In the Lewinsky affair, the central issue was not of perjury or adultery but of the abuse of power. To say this is not to brush off dishonesty or adultery as morally serious issues in and of themselves. They are. But it is to assert that if we are considering whether a political official should be removed from office then the foremost issue we have to address is whether he or she has abused their power while in that position. This is what elevated the Lewinsky affair to the level it has over the President's other (admitted) affairs and trysts. It was not simply that the President had an affair nor simply the fact that he perjured himself about it in a deposition to the Paula Jones case (and later, in Grand Jury testimony); it was that he was alleged to have obstructed justice by tampering with evidence, suborning others to perjure themselves, and promising protection and awards to present and former subordinates who cooperated. This legal issue has been evident from the start of the Kenneth Starr's investigation in January 1998 but has been overshadowed by the debate over adultery and perjury. The idea that the abuse of power is indeed a moral – and not just a legal – issue needs to be reestablished if we are to learn anything from this case.

To understand that the abuse of power is a moral issue one first needs to recover the idea of political office as a public trust. In our day, this vision of government has come to be replaced by the narrower concept of technocratic management. President Clinton's defenders appealed to this latter notion when they tried to dismiss impeachment on the grounds that the President needed to focus on policymaking. The idea of a trust is something that is held for safekeeping, for the good of others rather than for oneself – indeed, for the good of posterity. With a technocratic mindset, however, the goal is profits, bottom-line results. Technocratic management implies that we have “arrived” at our destination as a people, that we can enjoy our inheritance now, and that all that is needed is just a few good policies and a little fine-tuning to the machinery of government. A trust, however, is the conservation of the past as preparation for an uncertain future.

That politics has become so explicitly results-oriented is the flower of the philosophical divide between means and ends which Florentine diplomat Niccolo Machiavelli introduced into political discourse in the sixteenth century. In successive centuries, this concept has been reinforced by the increasing

influence of commercialism and scientific rationalism. Post-modern thinkers, reflecting the cynicism of the age, are taking this focus on results to its apogee by asserting that *all* politics is the manipulation of power for personal or group ends and therefore there can be no such thing as the common good. Even if they concede that there might be something that construed as the “greater public good,” they would argue that it is relative to time and culture and is not universal. But is this really the case?

Take, for example, the preamble to the United States Constitution. This is perhaps the most comprehensive, explicit, and yet concise summary of the overall purposes of any specific government.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

In this preamble, there are six purposes listed for the government that would be established by this Constitution: 1) to form a more perfect union; 2) to establish justice; 3) to insure domestic tranquility (i.e., maintain order and stability); 4) to provide for the common defense; 5) to promote the general welfare; and 6) to secure the blessing of liberty. Of these, the last listed is creatively ambiguous and the first is historically conditioned: the Constitution of 1787 was to replace the Articles of Confederation drafted during the American War for Independence. In the peace following the Treaty of Paris in 1783, the Articles of Confederation failed to provide effective government thereby prompting the Constitutional Convention of 1787.

The remaining four purposes, however, describe the most elemental, universal purposes of government. To see that they are universal, one merely has to negate them. That is, is there any government in history that was intentionally constituted to *pervert* justice, insure domestic *disorder*, *invite* foreign invaders, and *undermine* the general welfare? Certainly, there have been tyrannies, oligarchies, and democracies¹ throughout history and in modern age that have done such things, frequently to a bloody degree. Such regimes, however, are universally seen as having acted wrongly. They only could be sustained by force of arms and even the leaders of such regimes tended to follow Machiavelli’s dictum to make a pretense of acting in pursuit of the ideal purposes of government. Such pretenses are the honor that vice pays to virtue.

¹ These terms are being used in their classical sense. The ancient Greeks and Romans recognized that there are three basic ways in which a government could be composed: that which is by a sole ruler, that by a group of rulers, and that by a broader section of society. Unlike today’s political science terminology, the classical world also differentiated virtuous from corrupt forms of each of ways of composing a government. The virtuous forms of governments corresponding to these respective groupings were monarchy, aristocracy, and polity. The corresponding corrupt forms were tyranny, oligarchy, and democracy (i.e., mob rule).

Governments do not derive their legitimacy solely from the existence of popular support but from pursuing these four fundamental functions. Of these, maintaining internal order and stability and promoting the country's defense are so basic that any government which failed to carry them out would cease to exist. The two remaining purposes, to establish justice and to promote the general welfare, are such that a government will lose support and legitimacy if it fails to promote these things, even if it continues to maintain power. Governments that can carry out these functions earn popular confidence, even if they did not have such confidence at their outset. Conversely, governments that had popular support at their founding but cannot carry out these functions do not last. The primary responsibility of political officials is to ensure that the duties pertaining to these functions are discharged faithfully and effectively. If this is done, then the legitimacy of the government will be upheld, and stability and liberty will be bequeathed to future generations. This responsibility, then, is at the core of the idea that political office is a public trust.

It is one thing to understand that political office is a public trust but quite another to assert that the abuse of power and position is a moral, and not just a legal, issue. That it is a moral issue revolves around the fact that, after the obvious importance of security, the question of justice is at the heart of all government. This is true even over the promotion of the general welfare. How justice is constituted in a given society will set the framework for how the general welfare is promoted. This can be seen in Russia and many developing countries, where rampant corruption impedes their ability to reform their economies and extricate themselves from the economic morass that they find themselves. Moreover, rich nations which pervert justice are no more – indeed, probably less – stable than a poor nation justly ruled. One can see this, for example, in the global financial crisis of 1997-98 where, capital flew out of the newly emerging markets in large part after investors came to appreciate how much endemic cronyism (a perversion of justice) had seriously weakened the financial systems of those countries.

Justice inescapably involves moral values and judging the relative weight of those moral values. This fact, self-evident for generations, is in the process of becoming lost as justice increasingly comes to be seen as morally neutral and basically procedural: i.e., if certain procedures and policies are followed then justice is "assured." This "objective" approach appeals to our problem-solving character as Americans, particularly within the court system. At the same time, however, it is still further evidence of our slide away from the idea that public office as a trust and toward the technocratic vision of government. The insufficiency of "procedural justice" is popularly illustrated by the plethora of popular movies over the past quarter century in which the antagonists get their "just due" outside of – and not because of – the legal system. Within the legal system too, there is growing dissatisfaction with the technocratic vision of government, as courts chafe under the restrictions imposed upon their ability to make such moral judgments by mandatory sentencing laws.

Private Immorality and Public Corruption

Because the promotion of justice is so important to maintaining the legitimacy of government, political officials must be seen as acting in accordance with those principles and laws which they are pledged to uphold. That is true regardless of whether or not political officials want to concede that it is true, since the people governed will expect that of their leaders. As a result, simply by virtue of holding office, political officials have less scope for “private morality.” The consequences of their private transgressions are farther reaching because of the fact that their position is both more influential and more visible. While a case probably could be made for this in the Lewinsky affair, the recentness of the case argues for using a historical study to illustrate this conclusion. The most well-known historical case of a political leader’s adultery affecting the body politic can be seen in King David’s sin with Bathsheba, described in the biblical book of 2 Samuel chapters 11 and 12.

To recount the story as it is told in these chapters, after David’s ascension to the throne of Israel was secure, David decided to stay in Jerusalem while his troops deployed to the field to besiege the city of Rabbah. As he walked out on the portico of his palace one evening, David observed Bathsheba bathing herself and inquired among his servants as to who she was. Upon finding out, he ordered her brought to him and had a sexually intimate evening with her. Both were married at that time, she to one of his military commanders, a noble foreigner by the name of Uriah the Hittite.

Inconveniently for David, she became pregnant as a result of their tryst. To cover up this fact, David ordered Uriah back from the front under the pretext of finding out how things were going with the troops. While Uriah was back from the front, David encouraged him to go to his home and spend time with his wife. Uriah was an honorable man, however, and instead stayed in the servants’ quarters. Uriah knew that to spend time with his wife while his men were in still battle would have bred resentment among the soldiers and undermined discipline. In short, it would have been dishonorable. David then tried getting Uriah drunk, but even then, Uriah stayed in the servant’s quarters, not with his wife. Because Uriah did not spend time alone with his wife, David could not plausibly deny that Bathsheba’s baby was his.

Since it would be soon obvious to all that Bathsheba had become pregnant by someone other than her husband, David needed to find a way to get rid of Uriah quickly so that he could marry Bathsheba and thereby cover his immorality. The plan that he concocted was to have his army commander, Joab, put Uriah at the fiercest point of the battle and when the battle was at its most intense pitch, Joab was to suddenly pull the troops back, leaving Uriah exposed before the enemy. Joab carried out David’s orders to the letter, with the consequence that Uriah was killed in battle. David then proceeded to marry Bathsheba, the vulnerable widow of a war hero.

This incident first of all shows that personal immorality on the part of political leaders sows the seeds of corruption within government more broadly.

As in any adultery case, it is typical for the guilty parties to try and cover up their adultery. In this case, however, David the king used the apparatus of his office at his disposal to help him in covering up his deed. His actions created incentives for people to be loyal to him personally, rather than to the state more broadly. By using his position to cover things up, David created accomplices, as he needed the cooperation of Joab and of the servants in the palace: the former to see to it that Uriah was killed at the front, the latter to maintain their silence. Even more than creating mere accomplices, however, such reliance on personal loyalty can protect people who otherwise should be prosecuted. This was the case, for example, with David's reliance on Joab. Although Joab was a competent military commander, even before this incident he already had a reputation for being utterly ruthless. Over time, David's increasing reliance on Joab because of his proven loyalty would give Joab free reign to exercise his ruthlessness even more. Ultimately, David's son Solomon would have to execute Joab to secure his own accession to the throne (1 Kings 2:31).

The case also shows that such "personal" immorality on the part of political officials does indeed have political consequences. In this case, these consequences for the polity were brought home to David by the court prophet,

The case of David and Bathsheba shows that personal immorality on the part of political officials does indeed have political consequences. It can undermine the legitimacy of the government, foster factionalism, and strife, and even create instability that challenges the existence of the government itself.

Nathan. Shortly after the baby was born, Nathan approached David with a case for his adjudication: a rich man, possessing large flocks of sheep, had killed the only ewe of a poor man for a feast in honor of a traveler. When David heard the case, he was outraged at the injustice. His judgment on the case was swift and harsh: the rich man deserved to die; at a minimum, the rich man had to make restitution four times over to the poor man. At that point, Nathan reveals that the story was an allegory: the rich, uncompassionate man was David himself, and the case was David's sin against Uriah. David had effectively pronounced judgment on himself.

Typically, people recounting the story of David's adultery with Bathsheba end the story there and focus on the forgiveness extended to David because of his repentance. In the Scriptural account, however, the prophet Nathan pronounces four curses on David in 2 Samuel 12:10-14

(in boldface below). None of these curses were removed or mitigated by David's repentance and all of which would have been interpreted at the time as a catastrophic loss of legitimacy for David's rule.

*“Now therefore, **the sword shall never depart from your house**, because you have despised Me [the LORD] and have taken the wife of Uriah the Hittite to be your wife.’ Thus says the LORD, ‘Behold **I will raise up adversity against you from your own house; and I will take your wives before your eyes and give them to your neighbor**, and he shall lie with your wives in the sight of the sun. For you did it [committed adultery] secretly, but I will do this thing before all Israel, before the sun.’ Then David said to Nathan, ‘I have sinned against the LORD.’ And Nathan said to David, ‘The LORD also has put away your sin; you shall not die. However, because by this deed you have given great occasion to the enemies of the LORD to blaspheme, **the child who is born to you shall surely die.**” (NKJV, emphasis added)*

The political significance of these curses may not be readily obvious but nonetheless exist and illustrate that seemingly “private” actions can have far reaching public consequences. The first of these curses to be fulfilled was the death of the child conceived by David and Bathsheba within seven days of Nathan's pronouncement (2 Sam. 12:18). On the surface this curse is seemingly unjust, as after all, the child had no personal responsibility whatsoever in what came about between David and Bathsheba. From a political viewpoint, however, the curse is understandable as a way of showing that the legitimacy of David's rule had been seriously undermined as a result of his sin.

The political legitimacy of ancient Israel was founded upon the Ten Commandments and the Deuteronomic covenant. As a theocracy, the country was intended to be God's witnesses to the Gentile world. In terms of Israel's founding covenant, the Decalogue (i.e., the Ten Commandments), David had violated four of them in the course of his sin with Bathsheba: that against murder, against adultery, against theft (i.e., stealing Uriah's wife), and against coveting the wife of one's neighbor. No doubt David's servants were probably aware of what had taken place between David and Bathsheba. No doubt, also, that they could affirm that Uriah had acted with honor when he was home on leave. Given human nature, the servants could not be relied upon to keep the story quiet indefinitely. More than likely, they probably would have talked about the affair to others, including those outside the court. Cynicism almost certainly would have started to creep in among the servants, and probably out among the polity more broadly.

The first, and most serious consequence of the abuse of power by political officials, is to undermine the legitimacy of the government. David would have been legally correct in arguing that he himself did not kill Uriah—Uriah really did die in battle—but such a legalistic argument would have convinced no one in the court familiar with the situation. Moreover, rather than rewarding honor, as a king is supposed to do, David's adultery dishonored an honorable man and David's subjects who knew the truth would take the incident as an object lesson in what would happen if they crossed the King, even if they

were in the right. Left unpunished, the king would have been seen to be above the law. Had the child lived, he or she would have been the most visible proof of that assessment and would have been a lightning rod for those who wished to challenge the legitimacy of David's rule (and, of course, of God's covenant). The child's quick death would send a far clearer message to the nation at large than any single punishment inflicted on David himself.

The second consequence is the needless creation of additional factionalism and strife within the government itself. In a state where the foundational virtues are treated with disdain, then politics devolves into power plays for personal gains. That, in turn, undermines the unity of the government. In this particular case, the second of the curses to be fulfilled was that regarding the emergence of adversity within David's own house. Sometime after the death of David's child by Bathsheba, occurred one of the most sordid incidents in biblical history, the result of which would be civil war for much of the rest of David's reign. David's favorite son Amnon, displaying even more uncontrolled lust than his father, raped his half-sister Tamar (2 Sam. 13:14). Her full brother, Absalom, plotted revenge for two years against Amnon, culminating in Amnon's murder (2 Sam. 13:29).

A third consequence, in the extreme case, is political instability that challenges the existence of the government itself. After Amnon's murder, David, distressed, bore a grudge against Absalom. Absalom, in return, played upon whatever cynicism existed within Israel at that time, by posturing as one who would give the average person "true" justice, in contradistinction to David. Eventually, when Absalom determined that his power base was strong enough, he made an open attempt to usurp the throne (2 Samuel ch. 15). This fulfilled the third curse pronounced by Nathan, civil war, and the last curse, that regarding David's wives. In the course of the civil war, David retreated from Jerusalem, leaving his wives behind (2 Sam. 15:14). Absalom soon entered Jerusalem and, in order to disgrace David and to prevent any kind of reconciliation between, Absalom took David's concubines and had sex with them in public view (2 Sam. 15:22). This curse essentially is personal, public humiliation but it too is connected with the idea of legitimacy: by sleeping with David's concubines, Absalom tried to show that he was the master of David's house and therefore the *de facto* ruler of the country. Only after more years of war and Absalom's murder by Joab would David be able to regain his right to the throne.

Towards Integrity in Government

To conclude on the basis of the account just examined that the United States is teetering on the brink of civil war at this time is perhaps to claim too much. It is not too much, however, to state that the popular legitimacy of the government has been seriously undermined by thirty plus years of cynicism and that the Clinton presidency has added a considerable amount of fuel to that distrust, regardless of one's views regarding the Administration's actual policies. Nor is it an unrealistic stretch to say that if present trends continue, things could get much worse. The past already holds portents.

On April 19, 1995, a 27-year-old ex-Army sergeant blew up the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, killing 169 people in what was the single worst domestic terrorist incident in U.S. history. Timothy McVeigh did not belong to an apocalyptic cult or a radical terrorist group. He had, however, completely bought into anti-government conspiracy theories which have gained ground throughout the 1990s. The timing of the bombing reflects his anti-government antipathy, coming two years to the day after FBI and ATF agents raided the Branch Davidian compound in Waco, Texas which killed some 80 people total. This follows the 1992 race riots, where blacks in Los Angeles perpetrated some of the most destructive riots since the 1960s to protest the acquittal of two L.A. police officers charged with beating a black motorist, Rodney King. U.S. military forces had to be brought in to restore order to the City of Angels. In both of these cases, cynicism about the government ripened into violent antipathy toward it. And in both cases, the perpetrators claimed the crimes were committed to awaken people from that other result of cynicism, apathy. If the past is precedent, then the precedents are ominous.

We have to realistic about our current situation but despite these precedents a descent into further civil strife is by no means inevitable. Overcoming the depth of cynicism that now exists in the American politic will take time—even more so now, given the whole Lewinsky affair. The respect of the people will have to be earned; it cannot be gained merely by legislating a few “reforms,” as was tried after Watergate, since the corruption of people and institutions is not a problem of policy but one of human nature. Human nature is not perfectible and better laws will not always make us better people.

So, what is to be done?

To expect that our politicians will become more moral simply because that would be a good thing for the Republic no doubt is unrealistic. As a start, however, it is not unrealistic to expect them to be held accountable for their actions. Such accountability, unfortunately, is likely to be set back in the immediate future as a result of the perceived “lessons learned” coming out of the Lewinsky affair. In wake of the Senate’s acquittal of the President, Congress probably will choose to let the Independent Counsel law lapse when it comes up renewal in the middle of this year. The Republicans had been pressing for repeal of the law since Watergate

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(at least until the Clinton Administration took office) and with the impeachment and trial of President Clinton, the Democrats have joined them in expressing unhappiness with the law.²

It remains to be seen what effect this will have. Certainly, Kenneth Starr could not have pursued the investigations that he did if he had not had the unlimited financial resources that the law provides. Without government-supplied resources, however, the only groups that have the financial resources to challenge a prominent political official intent on retaining office at all costs will be corporate interests or special-interest groups. It is doubtful that such groups will be any less partisan than Mr. Starr is accused of being. Indeed, it is worth recalling that the original impetus for Mr. Clinton's alleged perjuries and obstruction of justice was the civil suit filed by Paula Jones and financed by private interests. If the possibility of appointing an Independent Counsel is removed, the responsibility for examining the President's fitness for office devolves back to the Congress, as only Congress has the kind of legal powers and financial backing for investigation that the Independent Counsel currently has. Such a return probably would even be more appropriate constitutionally. Yet if Congress does not have the will to hold members of the Executive Branch accountable for their actions, then—thanks to the Supreme Court's ruling in *Jones v. Clinton*—private interests can and will move into the vacuum. While such a conflux of corporate and special interests may not always be unjust, a notable potential for abuse exists and, for lower-ranking public officials, such influence may well prove impossible to resist.

Despite all that we have gone through as a result of the Clinton case in the past year, it should be remembered that impeachment is not in and of itself the worst of worlds. In the Clinton case, it was treated as a threshold never to be crossed—even if that meant twisting the Constitution. The practice of impeachment is not a sign that the government has failed: rather, it shows that the Constitution is still working. Accountability in government is a necessity. In many parliamentary democracies, the government can be collapsed by a simple vote of no-confidence. This leaves support for the government vulnerable to what is essentially a popularity contest. The advantage of the impeachment process is that it raises the threshold for what is considered an impeachable offense: a person is not going to be thrown out of office simply because he is disliked; it will be because he has abused his power. At the same time, the Founding Fathers never intended for the impeachment process to result in strictly a legal trial. Alexander Hamilton writes in *Federalist #65*:

A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. **The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or in other words, from the**

² N.B. (2022) This essay was written in February 1999, when the law was still in place, but its future in doubt. The law did indeed lapse on June 30, 1999 and was not renewed. The functions of the Office of Independent Counsel were eventually subsumed into the Justice Department's Office of Special Counsel.

abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.” (emphasis added)

The rarity with which impeachment was used in the past should not lessen our willingness to use it in the future, if that should be necessary. The rarity may be more reflective of the fact that previous generations had a greater sense of the public trust and there existed a greater moral consensus in the country as a whole. As a result, many politicians would resign office before getting impeached. Such attitudes have largely evaporated. Nevertheless, the Founding Fathers included the impeachment provision in the U.S. Constitution not because they intended for it never to be used, but because they had enough experience to realize that men are not angels and therefore need to be checked in their appetites for power.

In holding officials accountable, punishment must be real, and justice must be seen to be done. In the recent trial of the President, this was the primary reason why the proposal for censuring ultimately was not legitimate for restoring faith in government. Congress' inclination toward censure merely reflects the same standard that they apply to themselves. Censure would have reinforced the perception that constitutional officials consider themselves exempt from the laws that they impose on others. The cynicism among the general public that that is indeed the case is pretty well entrenched and polls for the last several decades consistently show that Congress is considered one of the least trusted parts of government.

Recovering the public trust, however, does not rest entirely on procedural accountability. If we are to preserve our ability to govern ourselves, we need to be cultivating in our citizens those qualities necessary for self-government. The fact that we assume that our government will continue as long as we have elections is yet one more piece of evidence that a technocratic concept of government holds sway over the

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American body politic. Self-government can be lost, and history is replete with examples where that has been the case. Indeed, none of the Founding Fathers had high expectations that our government would run of its own accord indefinitely.

Cultivating the qualities necessary for self-government is a far more complex thing than space here permits. One first step is to reframe our debates over policy issues to ask—and attempt to answer—the question of how a particular solution will affect our ability to govern ourselves. In the last [i.e., 19th] century, for example, debates over economic policy did not necessarily focus on economic efficiency. This can be seen in the adoption of the Sherman Anti-Trust Act. While economic efficiency arguments existed for that regulation, a more influential argument held that the legislation was necessary in order for the people to maintain their ability to govern themselves free from undue concentrations of economic power. Asking such questions today has become increasingly rare.

A second step for rebuilding the body politic is to recover a sense of civics education that balances realism and idealism. While such education is being undertaken in the states of the former Eastern Bloc, in the United States it has fallen into disrepute. Part of the reason is because during much of American history civics courses were used to extol American exceptionalism. The Founding Fathers were considered not simply wise, experienced statesmen: they were treated as if they had descended to earth from Olympus. Such an unrealistic view merited correction and indeed was challenged in the 1960s and 1970s. As with most things of those decades, however, the contrary view went to the opposite extreme. Civics education became an exercise in understanding organizational charts and bureaucratic interest groups. This can hardly inspire anyone to consider self-government as a stewardship and may even be downright counterproductive. If our focus is on manipulating the “system” then we should not be surprised when the educational establishment turns out people intent on doing exactly that.

Lastly, our political life requires courage among our political leaders. In the biblical example given earlier, the prophet Nathan was willing step forward to call his king to account when no one was willing to do so. Nathan did not have a protected position in government—indeed, accusing the king of adultery and murder could very easily have been grounds for losing his life. In our polity, where are the people who will hold other officials accountable at risk to themselves? We need people from the parties to hold members of their own party accountable for breaches of conduct and we need people from opposite parties defending the integrity of officials when that is appropriate. A political system is only as good as the people working in it. To accept poll-driven timidity on the part of our political leaders may well give us the government that we want, but it will not give us the government that we need.