

Should the Governor be Impeached?

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Introduction¹

On June 22, 2004 the headline of the front page of The Hartford Courant was one word: RESIGNATION. Under this banner there was a half-page colored photograph of Governor John Rowland holding the hand of his wife, Patricia, as they reentered the Executive Residence. The lead story began with the title "Rowland Remains Unapologetic." Most of this edition was devoted to the history of the rise and fall of the first governor in Connecticut's long history to be forced from office by an impeachment process that took six months and cost approximately \$5,000,000.

The primary factor driving this process was the wide spread sentiment nurtured by the Courant that the Governor during his nearly ten years as chief executive had engaged in numerous misconduct. The frequent news articles and editorial comments listing and discussing the alleged violations also became a regular part of news reports on television. Part of this coverage involved frequent public opinion surveys conducted by local universities and the Courant

¹ Sources for this essay were the numerous articles published in The Hartford Courant, the author's personal observations of the impeachment hearings, a forum held at Trinity College this past February on the merits of public campaign financing, and the author's numerous interviews with politicians, members of the press/media, and others directly involved with the Governor's scandal. Last May the author used a hypo-real case study titled "Should the Governor Be Impeached" at the annual conference of New England Political Science Association to explain the political issues facing our state. Political scientists from all the New England states were asked to complete a questionnaire and express their opinions.

which traced the drastic decline in the public's opinion of the Governor's integrity and job performance. From an approval rating of nearly 80 percent following the terrorist attack in September 2001, 70 percent of those polled following his confession in December 2003 believed he should resign.

There were three motives driving the mission of *The Courant*. It had failed to investigate carefully the charges of corruption and malfeasance raised by Democratic challenger William Curry in the 2002 gubernatorial campaign. Next, its editors were embarrassed by their formal endorsement of Governor Rowland for reelection. And the publishers and editors of this paper were perceptive in recognizing that an impeachment and trial of the Governor would make for many diverse articles, editorials, and cartoons that would sell more papers at a time when readership was declining.

Members of the state legislature, which was controlled by Democratic majorities in both houses, were frequently criticized in editorials for being too compliant and uncritical of their Republican Governor's policies and activities. In mid-December of 2003, several reporters asked the Governor, "Who paid for your hot tub and renovations to your cottage?" He responded, "I did." Eight days later after learning that the press had evidence he had not paid for these items, he admitted he had lied, that his employees and friends had given him "gifts," but he had given them nothing in return so there was no *quid pro quo*. He apologized, said he knew better, and asked to be given another chance to perform his duties faithfully as chief executive.

Two of Connecticut's three Republican members of Congress announced immediately following the Governor's confession that they had advised him to resign. But members of the state legislature waited more than a month before making a similar request. When the Governor repeatedly announced that he would not resign, the House voted unanimously to start impeachment proceedings. All but four members of the Senate expressed support for this action.

Within the story of Governor Rowland's resignation there was much more than the catalogue of his alleged violations of the public trust. During the past two years, members of the Governor's personal staff, political appointees, and friends who profited from state contracts admitted guilt for federal crimes, took the Fifth Amendment, or were announced targets in an ongoing federal criminal investigation of corruption in the Governor's administration. Before focusing attention on corruption in state government a year before the impeachment process began, federal investigators and prosecutors had won convictions and long prison terms for the mayors of two of Connecticut's largest cities, Bridgeport and Waterbury.

Basic Concepts, Fundamental Law, Principles, and Questions

The impeachment of the Governor motivated many of us to define concepts, reread our state constitution, and to compare it to the national constitution and the constitutions of other states. These comparisons raise enduring questions. To what extent is impeachment a political process similar to a recall election, and how does it differ from a criminal trial? It seems to fall in the middle. It is a process in which the people are not directly involved. On the other hand, members of an impeachment committee are not passive spectators in a court who take directions from a judge and express their opinions only in the seclusion of a jury room. Some members of an impeachment committee are usually lawyers, who act like both judges and jurors. But they do not need to follow traditional rules of a court. They can allow hearsay evidence, accept witness affidavits without cross-examination, and they can ask their special counsel to conduct special investigations and give them additional information. It is important to keep in mind, however, that although impeachment committees have wide discretion, they make no final decisions. Their only function is to prepare a recommendation related to probable cause to be determined by the House of Representatives. In short, impeachment is a distinct

removal procedure, and an impeachment committee is a unique component within this process.

While trying to decide if Governor Rowland should be impeached the words "law," "ethics," and "morality" were frequently confused by those who were engaged in the impeachment process and members of the public, who were trying to decide if their Governor should be removed. All three of these concepts are concerned with the need for society to have guidelines and standards for proper conduct, but each has a distinct meaning. "Laws" are the exclusive products of government. They are designed by legislators to set the lowest acceptable standards of conduct for all those to whom they apply because everyone should be able to obey them. All laws have sanctions which only governments can impose. Example: A government can set particular speed limits for all those who travel on its roads. Those who violate these limits can receive punishment outlined in statutes.

"Ethics" begin where laws end. Ethics are guidelines for behavior that is expected and accepted by those who participate in particular types of activity that may or may not be regulated by law and may or may not have sanctions. These standards are designed to motivate and encourage the highest types of service and conduct rather than the lowest. Practitioners of ethics are selected from the larger population and usually have to be certified by special training, examinations, and sometimes licensing. Examples: The ethical codes for public administrators or those in professions such as law and medicine.

While laws and ethics are subject to frequent changes, "morality" tends to be absolute, universal, and enduring. Examples: "No right turn on red" (old law); "Those who are ill should have their 'bad blood' drained" (outdated medical ethic); "Do not kill; honor your father and Mother" (enduring morality). Politicians usually cannot be jailed for lying and lawyers are nor disbarred for defending clients they know are guilty of breaking the law but elected officials can and are imprisoned for stealing and bribery.

Governor Rowland mixed morality, ethics, and the legality last December when he asked for primetime television coverage to announce that he had lied (moral violation), accepted expensive gifts from governmental employees and friends who held contracts and leases with the state (ethical violation), and asserted that the gifts he received were never inducements for favored treatment (legal violation). Impeachment of our Governor required us to rethink the concept of separation of powers at the state level. Unlike our national constitution which implies but has no explicit requirement for separation powers among the three branches of government, Article Two and Amendment 18 of the Connecticut constitution make separation of powers so distinct that the Governor's lawyers questioned the very legitimacy of the impeachment of a sitting chief executive (Article 11).

The intrusion of the FBI, federal investigators, and federal grand juries into investigations of local and state officials raises major questions about the concept of federalism:

To what extent does the authority and power of the national government preempt the authority of Connecticut's law enforcement officials: the chief state prosecutor, the state attorney general, the state auditors, the director of the ethics commission, and the legislative impeachment committee itself? Authority to investigate is concurrent and inherent in the authority to legislate.

Should national investigators and prosecutors probe issues covered by a state constitution and statutes but are not federal violations without express request of state officials?

Can a Connecticut governor be impeached by a state legislature without an express constitutional statement of justification? (Eight other states also have no constitutional grounds) Yes.

Does a governor have to be charged with a crime before he can be impeached? (Five states have this requirement)? Not in this state.

Must an impeachment committee follow the established procedures of state and federal courts in the admission of evidence and the examination of witnesses? No.

Can a governor be subpoenaed to appear before an impeachment committee and forced to testify? Yes, according to a recent ruling by our supreme court.

If a governor uses the Fifth Amendment of the national constitution, can this action be grounds for impeachment? Perhaps.

Can individuals already targeted by federal investigators and subpoenaed be forced to testify before an impeachment committee? Probably.

If they are forced to testify before an impeachment committee, can their testimony be used against them by federal prosecutors? Most likely.

Many of these questions were answered during the inquiry of the impeachment committee. But many others were made moot by the Governor's resignation.

Alternative Theories and Models

At the start of the impeachment process, the author asked a colleague, who happens to be an economist, "What causes a state such as Connecticut to become permeated by scandals of corruption in its state and local governments?" He responded, "The answer is really quite simple and is supported by an extensive body of economic literature." "When rational politicians and public officeholders perceive that the personal rewards to be gained from corruption are greater than the punishment involved if they get caught, they will steal, cheat, and lie." This response is based on three assumptions: we are all rational in our

decision-making; we are all motivated by self-interest; corruption is a combination of personal character and context. Also, most economists believe money is the most important variable in personal behavior.

Those who follow the disciplines of history and sociology have different views. They believe that politicians and public officeholders are representative of their local and national societies and cultures. If persons in these societies and cultures value wealth more than personal and family honor and respect for the law and social mores, then there will be corruption that is systemic and endemic. For example, a half century ago Connecticut had a Puritan ethic that held nearly all gambling as sinful. Now because of changes in how governments raise revenue, this state is deeply involved in state-sponsored lotteries, off-track betting, casino gambling, and other “get-rich quick” activities. Televised game shows in which contestants win large amounts of money quickly and with relatively little effort undermine the traditional work ethic. But unlike economists, historians and sociologists tend not to be economic determinists. They believe individuals, societies, and cultures are influenced by many diverse and complex factors, including individuals who have strong religious and moral beliefs.

Political scientists focus on authority, power, and influence in politics and government. They view money, culture, and characters as important secondary factors. They believe that what we put into our constitutions, statutes, and administrative regulations shape the behavior of public leaders and those of us who follow them. Political scientists hold that the behavior of a governor is mainly shaped by the authority granted to him as chief executive: to prepare and control the state’s budget, to influence the hiring and firing system, to award state construction contracts, and to approve those who get state-guaranteed loans.

Those seeking contracts, judgeships, state employment for their children, and other benefits will tend to give the governor whatever he wants and is

willing and able to accept: expensive cigars, vintage wine, gift certificates for expensive clothes, free use of expensive vacation homes, free concert tickets, free air travel, excessive rent payments for condominiums, investment opportunities in private enterprises, boats, cars, hot tubs, free home renovations, excessive lecture fees and funding for the Governor's wife's children's book.

The lower the governor's salary, the smaller his personal wealth, the fewer the personal benefits associated with his office, and the greater governor's family needs, the greater the temptation for moral, ethical, and legal violations. Wise policy makers will understand human nature and give their chief executive a salary and benefits commensurate with his authority, power, and responsibility even if he disapproves a salary increase because he believes it will hurt him in the next election, as was the situation with Governor Rowland.

Clinton versus Rowland

One cannot think seriously about the impeachment of Governor John Rowland without thinking about the impeachment of President William Clinton. Why did President Clinton survive impeachment while Governor Rowland was forced to resign? First, we need to observe the fundamental similarities in the impeachment of a president and a Connecticut governor. The task of determining the need and justification for removal of the chief executive rests with the national and state house of representatives. In both organizations, the speaker of the house has great authority to determine who shall serve on the impeachment committee and indirectly how this committee will function. In the Congress and the General Assembly, the trial of an impeached chief executive takes place in the senate, with the chief justice of the supreme court presiding. Here the models are the same.

There are, however, some important constitutional differences. The national constitution has no explicit separation of authority between three separate and equal branches of government as does the Connecticut constitution. Similarly, whereas the national constitution provides general guidelines and

grounds for removing a president, the state constitution implies that justification for removing a governor will lie with the discretion of the members of the impeachment committee and members of the House. More important, the greatest differences among these two impeachments are the alleged offenses, the degree of partisanship in the house organizations, the roles of the appointed special counsels, and the biases of the press.

Throughout the impeachment of President Clinton there was a serious question whether the President's illicit affair in the oval office qualified as "treason, bribery, high crimes, or misdemeanors" or an ethical and moral violation outside the constitution. Only later was he charged with the legal infractions of perjury and obstruction of justice related to his "sex trial." The allegations against Governor Rowland involved his receiving expensive gifts from employees, contractors, and office seekers in exchange for their receiving millions of dollars in state contracts, loans, leases, jobs, and judgeships. Throughout the impeachment of President Clinton he complained that the Republican-controlled Congress was engaged in a "rightwing conspiracy" that included the selection of a special prosecutor who was unethical in his efforts to fulfill a partisan objective. It was alleged that his reward for success would be an appointment to the US Supreme Court.

In sharp contrast, there was an absence of partisan bias in Connecticut's impeachment procedures. The Speaker of the House announced at the start that there would be a ten-member Special Committee of Inquiry, composed of an equal number of Democrats and Republicans, selected by the majority and minority leaders, and that there would be cochairmen, who would have equal authority. Built into the structure and procedures was the clear guideline that any decision to impeach the Governor must have bipartisan support. As a spectator at the public sessions held by the impeachment committee, the author was unable to detect any partisan bias.

Similarly, the special investigators and legal counsels who presented the evidence against the Governor and those who defended his interests were highly professional and displayed no partisan influence. The roles of the press in the two impeachments were in sharp contrast. Impeachments of chief executives at the national and state levels cause "feeding frenzies" of the press and media. In the case of Governor Rowland, The Hartford Courant was clearly prejudiced against him and this was a major factor in forcing his resignation. In the case of President Clinton, the press and media repeatedly reported that while he was being hammered by the Republican majority in Congress, the American public gave him favorable ratings for job performance in both foreign and domestic affairs. Democrats in the US Senate were greatly influenced by the Republican coalition against him, his popular support expressed in published polls, and they responded by denying the Republicans the two-thirds majority needed to convict and remove him from office. These differing roles of the press/media, political parties, and public support result in two sharply contrasting models that future national and state legislatures should consider when considering impeachments.

Connecticut's Symbolic and Truncated Procedure

On June 8, 2004, the House Select Committee of Inquiry (impeachment committee), its special counsel, and the Governor's defense team began their public presentations. They had spent four months investigating and deliberating the testimony from hundreds of witnesses and the evidence found in over 400,000 pages of documents. What is especially significant is the location this committee selected for its hearings. They were held on the third floor of the state capitol in an ornate room that had been used by both the judiciary committee and the state senate. This was a perfect environment for an impeachment because, as discussed earlier, this is a procedure that is similar to both the policy making in a legislative body and rules of justice followed in a court of law.

The ten members of the House Select Committee of Inquiry sat in two rows at the front of the room, arranged by their districts rather than partisan

affiliation. This organization reflected a bipartisan spirit that prevailed throughout the committee's deliberations. Each member of this committee had the use of a microphone, computer, and writing bench. Five of these legislators were lawyers. There was a large screen on the right side of the front wall for the members of the press/media and spectators, who had special areas reserved for them as they faced the members of the committee. Between the committee and the spectators there was a podium, microphone, desk and chair for witnesses. Lined against the right hand wall were the members of the Governor's defense team, consisting of his executive counsel, a state employee, the Governor's private lawyer, and members of their staff's. These lawyers represented the Governor in proceedings before both the federal criminal prosecutors and the impeachment committee. Facing the Governor's teams in front of stained glass windows on the left side were the members of the committee's special counsel. Also, along the left side, to the right of the special counsel, were members of the committee's technical team whose job it was to inventory and arrange the thousands of documents so they could be called for by the special counsel, individual members of the impeachment committee, or the Governor's defense team for projection on the large screen and each of the computers.

Although the evidence available to the special counsel and impeachment committee was vast, this special counsel in his introductory remarks make it clear that his case against the Governor would be truncated for three main reasons. First, time available for the committee to complete its investigation and prepare its report was very limited. Initially the Speaker of the House had set a deadline of April 14th for the committee to present a recommendation to the House for a vote and decision on whether or not the Governor should be put on trial by the Senate. Although the Speaker extended the reporting date to June 30th, as requested by the committee, the special counsel to the committee explained why his staff had difficulty meeting this extended target.

The second reason for the truncated presentation was the reality of the Governor and members of his administration being involved in concurrent investigations, a federal criminal proceeding and the noncriminal procedures of the impeachment committee. In the federal proceeding the stakes for the Governor and his associates were much higher. A federal court could convict and imprison the Governor while the House and Senate could only remove him from office. This meant that more than a dozen witnesses the special counsel wanted to bring before the impeachment committee to testify either refused to appear or indicated that if forced to appear by subpoena they would invoke the Fifth Amendment, indicating that what they said might be used against them in a criminal trial.

The third problem was the strategy of the Governor's defense team. Knowing that the Speaker of the House had set an initial reporting date that the committee would have difficulty meeting, the Governor's lawyers used delaying tactics. They filed suit in state superior court arguing that the committee had no constitutional authority to subpoena the Governor to testify in person. After losing the decision here, the Governor's lawyers appealed to the state supreme court, where the Governor lost by a vote of 5 to 2.

Why Did the Governor Resign?

Following the Governor's admission that he had lied, Republican members of Congress, members of the General Assembly, a substantial number of Republican officeholders, and a large majority of Connecticut's residents asked the Governor to resign. Throughout the six months of the impeachment process, Governor Rowland repeatedly asserted that he would not resign because he had not committed a crime by accepting personal gifts in return for specific state benefits there was no *quid quo pro*.

Four major factors convinced the Governor that he should resign before the impeachment completed its report for the House. First, there was the decision of the state supreme court that it was constitutional for the impeachment

committee to compel the Governor by subpoena and actual police force to testify in person. Anything the Governor said before this committee could be used against him in a federal indictment. If he lied before the impeachment committee or to a grand jury, he could be charged with perjury. Second, federal investigators kept expanding their investigation by demanding the Governor and his wife deliver an increasing number of personal documents, increasing the demands for additional time, effort, and money. Third, members of the Governor's personal staff began to leave him for other positions of employment, making it increasingly difficult for him to perform the routine duties and responsibilities of his office and those related to managing the entire executive branch. Finally, the Governor realized he had lost the trust and confidence of the people and the respect of the members of the General Assembly, making it impossible for him to govern.

Insights, Lessons, and Reforms

What can we and others learn from this experience of removing our Governor?

1. No matter how popular or how great a chief executive's authority, power, and influence, violations of morality, ethics, and law can lead to impeachment or forced resignation.

2. Before a potential candidate commits to a run for any public office, especially that of governor, he or she should ask, "Can I support myself, my family, and the lifestyle that I want to have on the salary and benefits that the position provides?" Temptations for corruption should be avoided initially.

3. Policymakers need to be realistic about the salaries and benefits they attach to the office of chief executive. Failure to pay appropriate salary and benefits up front could cost more than \$5,000,000 to correct.

4. Oversight of executive activities is one of the three primary responsibilities of legislators (the other two being representation of constituents and law making). Because few legislators have the time or expertise to engage in

complex and consuming investigations, they should insist on the resources of staff and technology to help them "check and balance" the executive branch.

5. Although a state may have the resources of an attorney general, state prosecutor, state auditors, and ethics commission, these offices lack the authority and power they need to attack corruption at the state and local levels. Also, attention should be given to organization and procedures that encourage these officials and their offices to cooperate so that national officials do not have to take over what should be the state's jurisdiction.

6. State officials should understand that the concept of "legal ethics" is an oxymoron. Ethics begins where laws end. The phrase of "legal ethics" should be replaced by the phrase "legal requirements."

7. Legislators should decide if there is a need to define specific grounds for impeachment. If the House and its impeachment committee should have authority to determine grounds for impeachment on a case-by-case basis, then this standard should be made explicit in the constitution or a statute.

8. Given the probability that our state again may be faced with concurrent federal and state investigations, there is a need to clarify and formalize what types of information must be shared.

9. Issues of corruption in government are the legitimate topics for partisan debates and campaigns. Comparisons of the impeachment of President Clinton and the resignation of Governor, however, reveal the feasibility of bipartisan cooperation once an impeachment process has been initiated.

10. Two New England states (Maine and Vermont), along with four other states, have adopted public campaign financing for state elections. Much of the corruption in Connecticut's local and state governments can be traced to campaign and election funding by special interest groups or individuals with strong personal motivations.

11. Local governments are creatures of their state government. The state legislature should use its constitutional authority for legislative home rule to

create a uniform code of conduct for local officials that has the status of law with prescribed sanctions. And the state should provide assistance when a local government wants to remove an elected official. Bridgeport and Waterbury are painful examples of this need.

12. Residents of Connecticut are generally familiar with the problems of corruption in Providence, Rhode Island, but they know relatively little about how the other New England states deal with this issue. For example, the residents of Maine recently voted against casino gambling because they viewed it as a major cause of corruption in government. Those opposed to casino gambling used our state as an example as to how casinos can corrupt governments. There is a need for our legislature to study the question: To what extent is casino gambling a corrupting influence on our state and local governments?

13. Our constitutional requirement that the President Pro Tem of the Senate become the Lieutenant Governor when the Governor resigns is a requirement that is in conflict with our well established tradition of party government. Connecticut should follow the model used by our national government when a President resigns.

14. There is a need for our state to hold a constitutional convention that is designed to focus on the insights and lessons learned from the painful experience of our Governor's forced resignation. This need should be addressed by candidates running for seats in the House and Senate this fall.