Pains and penalties procedure: how the House of Lords ‘tried’ Queen Caroline

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In the summer of 1820, King George IV demanded that his government secure the punishment of his estranged wife, Caroline, for her allegedly adulterous behaviour. Ministers acquiesced, and introduced a bill of pains and penalties to deprive the Queen of all royal titles and privileges, and to affect a divorce. After lengthy consideration by the House of Lords the bill was withdrawn, to the King’s annoyance and the embarrassment of his government. This incident is well known to historians of early nineteenth-century social and political history.¹ The actual process undertaken against the Queen is less so. Nor was it generally understood at the time. Writing to her brother in August of 1820, Lady Cowper complained, ‘A bill of Pains and Penalties is an awkward name, it sounds to the ignorant as if she was going to be fried or tortured in some way.’² It is the aim of this chapter to examine in some detail the bill procedure as a parliamentary phenomenon. It conferred on Parliament considerable authority, but its unusual process also subjected the legislature to considerable strain. In the Queen’s case this strain fell upon the House of Lords, and it is enlightening to consider how this was borne by a group described by one observer as notable for its education and experience of public affairs,³ and by a member as ‘by far the stupidest and most obstinate collection of men that could be selected from all England’.⁴

It is appropriate to begin with a brief chronology of the Queen’s domestic problems. On 8 April 1795 Caroline of Brunswick married her cousin George, the Prince of Wales. Despite the birth of their daughter, Charlotte, on 7 January 1796, the marriage was a failure. As early as May of that year the Prince submitted a request to George III for a formal separation. While this was refused, a separate establishment was purchased for the Princess, and the Prince avoided any unnecessary contact with her. The Prince’s conduct towards his wife, together with his dissolute lifestyle, resulted in considerable public sympathy for Caroline. This state of affairs was not to last, however. Stories spread about her eccentric, indecorous, and improper behaviour, and in the spring of

1806 the Prince prevailed upon ministers to appoint a commission of inquiry.⁵ In their report of 14 July the commissioners acquitted the Princess of the specific charge of adultery, but expressed concern about other evidence of indelicate behaviour.⁶

Following this cautious vindication, Caroline's public reputation improved somewhat. Her situation became more precarious, however, following the creation of the Regency, in 1811. In 1813 the Regent's determination further to limit his wife's access to their daughter led to the re-publication of the old charges and counter-charges.⁷ In the following year she was barred from the celebrations marking the defeat of Napoleon, and shunned by the visiting Allied dignitaries. Shortly after this she indicated a wish to leave England. Far from voicing any objection, the government hurriedly took the necessary steps to assist the departure of this embarrassing individual. Legislation was enacted, recognising her separation from the Regent, and providing for her establishment abroad.⁸ She returned to Brunswick, and then embarked upon an extensive tour of the eastern Mediterranean. In 1816 she purchased an estate on Lake Como, and thereafter divided her time between northern Italy and Austria.

The Princess may have been gone, but she was not forgotten. The Regent received unfavourable reports of her conduct from the Austrian court, particularly of her relationship with one Bartolommeo Bergami. In 1816 this information was placed before the Cabinet. Buttressed by discouraging opinions from the law officers, ministers advised inaction.⁹ Not content, in 1817 the Regent turned to his friend Sir John Leach. Leach considered an investigation of the Princess's travels in Italy and beyond as likely to produce more compelling evidence of misbehaviour. While unwilling to sanction an official inquiry, ministers agreed to fund the three-member commission that Leach assembled. This panel was despatched to Milan in September 1818.¹⁰ The appointment of the Milan Commission also inspired those who wished to support Caroline if the Regent attempted to divorce her.¹¹ One of these, Henry Brougham, sent his brother to Italy in the spring of 1819 to discuss with her the possibility of a permanent separation. For their part, ministers looked favourably on this plan, provided it was seen to originate with the Princess.¹² Efforts to secure a separation, however, were unsuccessful.

The death of George III, on 29 January 1820, threatened to upset the status quo. The Regent became George IV, and his wife's position also required reconsideration. As a practical matter, the settlement arranged in 1814 had determined on the demise of the old king, and it remained for the government to recommend a new one. Ministers found themselves awkwardly placed between the King, who felt that his wife's outrageous behaviour merited little sympathy, and the likely public preference for a woman cruelly treated by a dissolute husband. In February 1820, the Cabinet acquiesced to the King's demand that Caroline be excluded from that part of the Anglican liturgy in which prayers are said for the royal family, and denied the honour of

coronation.¹³ They strongly advised, however, that he content himself with a re-negotiated separation, which could tie her financial support to her continued exile abroad.¹⁴ The King grudgingly accepted what he called 'this mitigated measure'.¹⁵

Exclusion from the liturgy, and the unfriendly treatment accorded her by foreign dignitaries, seems to have provoked the Queen to just the sort of action that ministers wanted to prevent – her return to England. On 3 June she rejected the government's proposals, and two days later she arrived at Dover. Her progress to London was marked by large demonstrations of popular support. In no way dismayed, on 6 June the King deposited with Parliament the evidence compiled by the Milan Commission, and ministers re-opened negotiations with Brougham. The liturgy again proved an insurmountable obstacle,¹⁶ and on 23 June she rejected the compromise urged by a Commons delegation.¹⁷ Ministers then put in train the process that would result in the Queen's trial. On 26 June the Commons adjourned in deference to the Upper House, which had previously named a Secret Committee of Inquiry. On 28 June this committee met, and six days later it reported that, so serious were the accusations against the Queen, 'it is indispensable that they should become the subject of a solemn Inquiry'.¹⁸ On 5 July the Prime Minister, Lord Liverpool, introduced a bill of pains and penalties.

While the necessity of the government's taking some action against the Queen thus becomes clear, the decision to proceed by a bill of pains and penalties requires further explanation. Canon law did not recognise the possibility of divorce in the sense of dissolving a valid marriage and enabling the parties to remarry. The church could determine that a couple had never *been* married, and it could separate a lawfully married couple, where there had been serious misconduct during the marriage such as adultery or cruelty. At the end of the seventeenth century, however, it had become possible to end a valid marriage by act of Parliament, where the wife had committed adultery. It was usual, and then obligatory, for the petitioning husband first to obtain a separation in an ecclesiastical court, and a verdict at common law for criminal conversation, in which the adultery was considered a trespass by the wife's lover.¹⁹

The obvious means by which George IV could divorce Caroline, therefore, was by establishing her adultery, obtaining a decree of separation and a verdict for damages, and winning approval for a bill of divorce in both Houses of Parliament. Unfortunately, however, compelling legal and practical objections existed against such a course of action. Leaving to one side, for a moment, the question of her guilt, litigation against Caroline would prove difficult. A husband was not deemed to suffer an injury at common law when his wife committed adultery while they were living apart.²⁰ This would conceivably have barred any action based on Caroline's conduct after 1796, and certainly after 1814. Moreover, an ecclesiastical court would not grant a separation on the grounds of adultery by the wife where the husband had committed the

same offence. That the King had conducted liaisons with a number of women since his marriage was notorious, and any accusation against the Queen invited the production of damaging and embarrassing 'recrimination evidence'.

It was because the usual means of proving wrongdoing on the Queen's part were thus unavailable that ministers considered less-obvious alternatives. One idea, likewise rejected, was a prosecution for treason as a proper foundation for a bill of divorce – always assuming that the King did not terminate his marriage by enforcing the criminal sanction. The Treason Act of Edward III addressed the illicit sexual activities of 'the King's companion, or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir'.²¹ The statute, however, was directed at the man who had violated the royal spouse, daughter, or daughter-in-law. *Her* liability rested in consenting to the treasonable act. In Queen Caroline's case, however, the alleged adultery had taken place abroad with the man Bergami, who owed no allegiance to the King of Great Britain. Bergami's conduct, therefore, could not constitute treason, nor could Caroline abet that act.²²

The failure of this expedient naturally turned royal and ministerial attention to the question whether a bill of divorce need necessarily be founded on a separate judicial determination of fault. Certainly Parliament could impose sanctions by procedures that combined legislative and judicial functions. Where objectionable conduct would constitute a crime under English law, Parliament could conduct an impeachment. Where the conduct would not constitute a crime, Parliament could enact legislation to criminalise it retrospectively. A bill of attainder, which rendered conduct treasonable or felonious, or a bill to inflict pains and penalties, which affected less-serious conduct, proceeded through each House in the usual stages. At the second reading stage, however, the process assumed a judicial character. Counsel were heard for and against the bill, witnesses were called, and peers and MPs could participate in cross-examination. This 'trial' would effectively determine whether the bill succeeded.

The circumstances of the Queen's alleged misconduct made an impeachment for treason impossible. There were also practical objections to either a bill of attainder or of pains and penalties. In their opinion of January 1820 the law officers strongly advised against a bill of attainder *because* it would inflict such severe punishment for an act which English law would not so punish,²³ and indeed attainder does not seem ever to have been seriously considered by the government. A bill of pains and penalties, which merely found the Queen guilty of adultery and dissolved her marriage, would still bear the odium of an *ex post facto* law, but was less likely to upset public sensibilities. The law officers considered it the least objectionable option.²⁴ Ministers, however, did not warm to it. They did not doubt that the Queen would produce or attempt to produce all information embarrassing to the King, and they worried that Parliament would rely on such information to defeat the bill in the same way that an ecclesiastical court's decision would be affected by recrimination evidence.²⁵

Even if it had not this effect, the use of such information by opposition politicians and the radical press would be harmful to the interests of the kingdom.²⁶ These objections, moreover, were based on the assumption that an accusation of adultery could be sustained, and ministers were far from convinced on this point. They repeatedly warned against relying on the testimony of foreigners, 'most of them not above the rank of menial servants, or that of masters and attendants in hotels, wholly unacquainted with the English language'.²⁷

The Queen's return to England in June 1820, and her refusal to accept the government's compromise, forced ministers to overcome these qualms. In a letter to Lord Kenyon, Liverpool explained what had become the government's position by July.²⁸ This was, as much as possible, to remove all personal interest from the case and focus upon the needs of the state, Parliament, and the Crown. Liverpool argued that even if the circumstances made prosecution for treason impossible, adultery by a queen was a crime against the state. It was, therefore, an appropriate object for a bill of pains and penalties. Having recognised the criminality of that conduct, Parliament could impose an appropriate sanction, including the forfeiture of her royal status and severance of her ties with the British Crown. This would, of necessity, include the termination of her marriage. The fact that it would afford relief to the King in his individual capacity was irrelevant. He had brought the matter to Parliament's attention as a public accusation, and not as a measure of personal relief. His entitlement to such relief, therefore, was also irrelevant.²⁹ Whether such expressions of disinterestedness would convince Parliament, however, remained to be seen.

It only remained for the government to decide in which House of Parliament the bill should originate. The House of Lords was the obvious choice for several reasons. It was superior to the House of Commons as a judicial forum in that witnesses appearing before it could be sworn, and litigation of various kinds regularly occurred there. Bills of divorce, moreover, inevitably originated in the House of Lords, and the rank and situation of the individuals concerned in this action made the Lords particularly appropriate.³⁰ The government also preferred the Upper House for tactical reasons. In that generally tranquil and less-partisan setting responsibility for the bill could rest on the Prime Minister and the majority of the Cabinet, while presiding over the debates would be Lord Eldon, the Chancellor. In the more raucous, stormy Commons, by contrast, debates were regulated by a non-partisan Speaker, and the government's burden must be borne almost exclusively by the Foreign Secretary, Lord Castlereagh. On 20 July the Queen's lawyers firmly advised against reserving her defence until the bill reached the Commons. They felt that avoiding a forum where witnesses were sworn, and favouring one where they were not, would both 'raise considerable prejudice' in the minds of peers and MPs, and create real difficulties for the presentation of her case.³¹

The trial began on 17 August, the date designated for the second reading of the bill, and concluded on 6 November, when the vote on the second reading was taken. It is not the intention of this chapter to trace the substantive

Table 4.1 *Non-attendance on the first day of the Queen's trial*

<i>Reason for non-attendance</i>	<i>Numbers</i>
Out of the realm	25
Illness	22
Over 70 years of age	31
Absent on royal service	2
Death of family member	1
Excused attendance	3
Not summoned	3
No response	1

Source: House of Lords Journal, vol. 53, p. 371.

arguments made for and against the Queen, but rather to examine how the House of Lords struggled to use this complex and unfamiliar hybrid process. The judicial nature of the proceedings was certainly evident during the forty-nine days in which the House was in session. The differences between this proceeding and one conducted in a regular court of law, however, were very significant. The venue of the House of Lords, and the peculiar qualities of the personnel involved, rendered this 'trial' a strange combination of the judicial, the legislative, and the political.

There was nothing odd about the House of Lords as a setting for judicial proceedings. Appeals from English, Scottish, and Irish common law and equity decisions were regularly heard in the House of Lords. While less-frequently invoked, the Lords' original jurisdiction concerned both civil and criminal matters. It was the forum for impeachments and trials of peers. As a Committee of Privileges it decided peerage claims and could undertake advisory proceedings on private bills before they went to the floor of the House. Most of its judicial work, however, provoked scant general interest, and attendance was consequently modest. For the Queen's trial, however, the chamber was packed. The Chancellor had been charged to inform every peer and lord of Parliament of the obligation to attend. The only valid excuses for non-attendance had been advanced age, sickness, absence abroad, or the death of a close family member.³² Unexcused absence resulted in a heavy fine: £100 for each of the first three days of the proceedings, and £50 per day thereafter.³³ Whether prompted by personal financial interest, public duty, or simply curiosity as to the details of the case, attendance was very good: 256 attended on the first day,³⁴ and in succeeding days attendance averaged 231.³⁵ This was in contrast to a regular average attendance of about fifty.³⁶ In addition to the lords, the high court judges were summoned to provide expert assistance to the House. Lawyers for and against the bill constituted the other significant group of participants. Appearing chiefly for the bill were Sir Robert Gifford, the Attorney General, and Sir John Singleton Copley, the Solicitor General.

Table 4.2 *Attendance in the House of Lords, 1815–25*

<i>Year</i>	<i>Days House in session</i>	<i>Average attendance</i>	<i>Range</i>
1815	99	41.30	3–139
1820 (excluding the trial)	86	65.10	5–222
1820 (the trial)	49	231.92	213–58
1825	101	51.76	3–199

Source: *House of Lords Journal*, vols 50, 53, 57.

Appearing against the bill were the Queen’s law officers: Henry Brougham, Thomas Denman, and Stephen Lushington. The legal ranks on both sides were swelled by junior counsel, solicitors, and clerks. Sir Christopher Robinson, the Advocate General, Dr William Adams, and James Park assisted Gifford and Copley, together with George Maule, the Treasury Solicitor. John Williams, Nicholas Tindal, and Thomas Wilde served as junior defence counsel, and the solicitor for the Queen was William Vizard.

The attendance of all these people created a serious practical problem: accommodation. Seating in the chamber was formally allocated according to rank and office. In order to accommodate the larger than usual numbers during the trial, a gallery was erected above the benches on both sides. The judges sat beside the Chancellor, and counsel were accommodated at the bar. Provision was also made for the Queen and her attendants. When present in the chamber she was afforded a chair close to her counsel, but within the bar of the House. The trial was also well attended by spectators.³⁷ MPs and distinguished visitors, like Richard Rush, the American Secretary of State, were seated near the throne.³⁸ The less exalted were huddled below the bar.

This crowding had definite consequences for the conduct of the trial. Most notably, the noise in the chamber made it very difficult to hear.³⁹ This was a frequent cause of complaint, and must have increased the likelihood that peers would rely more on written accounts of the trial than they would upon what they had actually heard. The newspapers provided lengthy coverage of the trial, and journalists were among those in daily attendance during the proceedings. Nevertheless, the Chancellor adopted the usual attitude in the House towards the newspaper reporters present on important occasions – he affected not to notice them. He did warn, however, that ‘if any persons answering that description had found their way below the bar, and were, in breach of their Lordships’ privileges, to publish any occurrence that took place in that house, which their Lordships had particularly signified their intention ought not to be published, such persons would do so at their peril’.⁴⁰ On 23 August the Earl of Darlington requested that copies of the printed evidence be produced on a daily basis. This was opposed on the grounds that the official record of the House could not be produced both quickly and accurately.⁴¹ Nevertheless,

Darlington's request was granted. The attempt to comply caused problems only a week later when it was found not possible to challenge a witness's prior testimony because the transcript was at the printer's.⁴²

Crowding also meant that onlookers had a surprising degree of access to the lawyers. Charles Greville mentioned the opportunities for eavesdropping that such proximity afforded him. 'I cannot help hearing all their conversation, their remarks, and learning what witnesses they are going to examine, and many other things which are interesting and amusing.'⁴³ Others were not content with a merely passive role. Spencer Perceval, the son of the late prime minister, was standing close enough to Brougham to whisper a quotation from *Paradise Lost*, which Brougham incorporated into his interrogation of one of the Milan Commissioners.⁴⁴ When the Duke of Wellington realised that a defence witness was lying, he communicated his suspicions to the Solicitor General, whose subsequent cross-examination reduced the witness to incomprehensibility.⁴⁵

The various personnel involved in the trial also distinguished it from the usual judicial proceeding. Most notable in this respect were the lords themselves. They were authorised to examine witnesses, and to resolve all questions regarding their own procedure. Nor did they play an insignificant part in these matters. Of the fifty-eight prosecution and defence witnesses called, only thirteen were not questioned by the lords. While the most frequent participants were those with professional experience or political precedence, cross-examination was not a task left to a few. Sixty-two different peers posed questions to witnesses, and most of these spoke on more than one occasion.⁴⁶ While the usefulness of such questions naturally varied, it should not be assumed that this phase of the proceedings was less important than the examination by counsel.

Lords' contributions, it should be noted, did not always have an obviously salutary effect on the proceedings. In the chamber their conduct could be awkward in the extreme. They failed to keep quiet – murmuring to express disapproval, laughing at humorous statements, such as an interpreter's admission that there was no word for 'gentle woman' in the French language, and generally contributing to an unsettled atmosphere.⁴⁷ Those lords who did not understand regular judicial procedure frequently asked questions and made suggestions that seemed strange to the experienced practitioner. Liverpool, for example, thought that a witness should be permitted to answer a question before counsel could object to it.⁴⁸ Those lords with professional experience offered helpful explanations to their colleagues, but their interjections were also disruptive. Lords Erskine and Lauderdale were the worst offenders in this respect. A former chancellor and distinguished advocate, Erskine could not resist indulging in reminiscences of his own courtroom experiences. For example, during the discussion of whether an Italian witness could be asked if there was a form of oath more binding upon his conscience than that used in English courts, Erskine related the story of a witness at the assizes who had

objected to kissing the Bible, but had wished to hold up his hand because the Book of Revelations described an angel standing upon the sea and holding up his hand. Erskine explained, 'I said this does not apply to your case, for, in the first place, you are no angel, secondly, you cannot tell how the Angel would have sworn if he had been on shore.'⁴⁹ Lauderdale frequently complained about the irregularity of this or that line of questioning. Peers were also happy to suggest – though rarely to agree upon – improvements for their own procedure. Lord Holland suggested that the several high court judges would be better confined in an adjoining chamber so as to insulate them from the evidence.⁵⁰ Erskine wanted to permit questioning in a manner that he acknowledged was contrary to the rules of evidence, on the grounds that he had never approved of the rule in question.⁵¹

The degree to which the lords let political allegiances overwhelm their judicial responsibilities is questionable. During the trial there were significant demonstrations of political independence, though Wellington complained of 'a great deal of *caballing*' along party lines as the proceedings drew to a close.⁵² Moreover, while the desire to score political points cannot be ignored when assessing some contributions, the tendency of the lords' examination to address details of matters raised by counsel suggests that the lords were affected by what was being said and not merely to what they wanted to hear. Outside the House, however, lords seem to have exercised very little restraint. Not only did their dinner party conversations seem to have consisted of little but the trial, they also opened their minds to counsel. Brougham and Denman were invited to spend weekends at Holland House in August and September, and Brougham confided in his memoirs, 'I went among the members of both Houses, both at Brooke's and in the families which I knew they frequented. This gave me the means of ascertaining, as we proceeded, the effects of the evidence and the arguments on both sides.'⁵³

The two most important government peers were far more discreet. Liverpool and Eldon avoided discussions of the trial away from the House, and conducted themselves with propriety inside the chamber.⁵⁴ In Liverpool's case the explanation for this conduct is a straightforward one. He had been obliged to institute proceedings contrary to his wishes, and he carried out his duties conscientiously, but with little enthusiasm. For Eldon's conduct the explanation is more complex. As Speaker of the House of Lords, Eldon's role was to help members regulate their debates rather than to impose regulations upon them. This established practice, coupled with Eldon's own dislike of appearing to act other than according to clear legal principles, made him a very mild-mannered presiding officer. Consequently, he referred questions of law and procedure to the judges, despite the fact that time after time they merely confirmed his assessment. He also allowed counsel, particularly the defence counsel, considerable latitude in the manner in which they stated their case.⁵⁵

The fact that much of the case against the Queen involved the testimony of foreigners also set it apart from regular English trials. Prosecution and

defence each provided an interpreter, and the practice of interpretation contributed much to the complexity of the proceedings. The interpreters complained when witnesses interrupted, or did not understand what was being asked, while the interpreters were chided for intruding themselves too much into the case.⁵⁶ Moreover, lords sometimes were, or believed themselves to be, more knowledgeable in French, German, or Italian, and challenged the translations given.⁵⁷

It remains to say something about the counsel appearing for and against the bill. Together they constituted a formidable array of legal talent, including three future chancellors and two future chief justices.⁵⁸ This is not altogether surprising, given the nature of the case. What is surprising is the fact that the leading counsel on both sides were almost not permitted to appear. According to the standing orders of the House of Commons, MPs could not appear as counsel on legislation before the House of Lords. This was to prevent such MPs either from experiencing a conflict of interest, or from exerting improper influence in the promotion of private bills.⁵⁹ On 12 July, therefore, Brougham was obliged to move that the Commons' standing orders be so far waived as to allow him and Denman to appear for the Queen.⁶⁰ This waiver was extended to the Crown's law officers over Brougham's objection that, as the case was merely one of public interest, their presence was not required. The identity of opposing counsel was not the only problem that the defence had with the proceedings. Brougham complained about what he described as the 'mixed capacity' of peers, which enabled them to display their political or judicial demeanours as these suited them.⁶¹ This tendency was particularly evident in their examination of witnesses. Brougham later recalled, 'When successful, they were like advocates; but when they failed, straightway they became judicial, and must only be considered to put the question as judges anxious to draw out the truth.'⁶²

The lawyers were not alone, however, in having grievances. For their part, the lords found the lawyers' tone, particularly that of the defence counsel, rude and overbearing.⁶³ In part this was probably due to the fact that the lawyers represented opposite political as well as legal positions. This combination rendered the trial both tantalising and frustrating for able and ambitious advocates like Copley and Brougham. On the one hand, it provided an unparalleled opportunity to display one's professional skills and thereby advance one's career. Copley, in particular, would have been aware that an impressive performance would strengthen his claim to succeed Eldon on the Woolsack. On the other hand, however, the trial exposed the advocate to the dubious mercies of over 200 'judges', some of whom were one's political enemies and many of whom were capable of asking awkward questions through ignorance, boredom, or irritation. It is tempting, certainly, to assign some of Brougham's aggressive manner towards the House to his own situation as an opposition lawyer, and to his knowledge that the greatest professional prizes were beyond his reach.

Finally, the trial was both long and complicated. In terms of duration and intensity, it was unparalleled in contemporary English law. The average criminal trial in the early nineteenth century was extremely brief – certainly several per day during an average assize or Old Bailey session.⁶⁴ Even a complex and politically sensitive trial, such as Thomas Hardy's prosecution for 'constructive treason' in 1794 had only lasted seven days.⁶⁵ Judicial proceedings in Parliament tended either to be short or to occupy only a limited amount of the House's attention at any one time. The closest parallels to the Queen's trial were the impeachments of Lord Melville and Warren Hastings. Melville was acquitted after proceedings of fifteen days. Hastings's impeachment lasted 142 days, but these were spread over a period of eight years. During that time, interest in the case varied according to the press of other business and the dedication of the impeachment managers.⁶⁶ During the Queen's trial, by contrast, little, if any, other business was done in the House. The combination of long hours, enforced attendance, and frequently complex legal arguments took its toll. On 2 September, Lady Granville confided to her sister, 'The Lords are all tired and suffocated'.⁶⁷ In a letter to George Canning Liverpool confessed, 'in the whole course of my life I do not recollect to have undergone such continued fatigue'.⁶⁸ There were certainly opportunities for the attention of participants to wander. During one pause the Chancellor amused the judges by drawing a caricature of himself and circulating it among them.⁶⁹ Nor did the inquiry itself fail to provide scope for entertainment. Holland recalled that he spent much of his time 'writing nonsensical puns and epigrams on the various indecencies which occurred'.⁷⁰ The Queen, perhaps finding less enjoyment in such pursuits, typically kept to her apartment adjacent to the chamber, where she played backgammon with the former Lord Mayor of London.⁷¹

Despite the efforts made to provide for likely difficulties, the House of Lords was not sufficiently familiar with the pains and penalties process to deal effectively with the range of issues that arose as the trial progressed. Nor is this surprising, as the procedure had last been used against Bishop Atterbury almost a hundred years previously.⁷² In fact, the pre-trial concentration on such matters as seating appears slightly naive when contrasted with the issues that were not considered beforehand, and that were muddled through once they did arise. For example, prior to the appearance of the first prosecution witness, Lord King queried the authority of the House in the event of perjury. Could they punish like a court of record, or only commit the malefactor for falsehood and prevarication during the term of their sitting?⁷³ The Chancellor did not know the answer to this question, nor did he know whether a prosecution for perjury, supposing one would lie, could commence without a special order of the House. Having made inquiries, Eldon reported that a prosecution could be maintained, and the House approved his motion to suspend their privileges in the event of such a prosecution.⁷⁴ The time of adjournment also caused awkwardness, as the House could not agree whether it preferred to adjourn at four o'clock or at five.⁷⁵ A third, more important, decision

concerned voting rights. Were those who did not attend every day of the trial eligible to vote on the bill? Debate on this issue exposed differing views, but no explicit resolution, as peers questioned whether any absence, or only absence for a significant – but unspecified – period ought to disqualify.⁷⁶

The issues of perjury, adjournment, and voting could be classed as procedural irritations – they never threatened to derail the proceedings. Other issues were much more dangerous in this respect. In attempting to vindicate the Queen, her lawyers issued a series of procedural challenges to the House, which had two obvious benefits for the defence. If successful, they could help strengthen the Queen's case. If unsuccessful, they could still help to discredit the case against her. A third benefit, which may or may not have been the ultimate aim of Brougham and company, was so to protract and complicate the trial by the discussion of these challenges that the entire process would be condemned as unworkable. Whether any of the benefits were actually achieved is uncertain. What is clear, however, is that the manner in which the House dealt with these challenges demonstrates how uncertain was their grip on their own procedure.

The first challenge came before the trial proper had begun, when Brougham requested that the defence be given a list of prosecution witnesses.⁷⁷ The statute of 7 Anne c. 21 (1708) provided that all persons indicted for treason should receive a list of witnesses ten days prior to trial. Brougham's request, however, caused peers to argue whether they should extend the privilege to the present case. Erskine favoured provision of a list, and to avoid the objection that this would place an unfair restriction upon the prosecution, he proposed that the list exclude rebuttal witnesses.⁷⁸ This prompted the Chancellor to complain that Erskine wanted not merely to apply a rule that was unique to treason, but to alter the very rule deemed so valuable. Rather than adopt such a dangerous innovation, Eldon advised the House 'to go on in the ordinary and established course'.⁷⁹ A committee was appointed to examine the records of bills of attainder, pains and penalties, and impeachments, to determine whether there was precedent for granting Brougham's request. Three days later it reported that there was not.⁸⁰ The absence of precedent did not, however, immediately determine the issue. Lord Lansdowne complained that it was not for the government, having put the unfamiliar process in train, either to invoke precedent or to decry its absence.⁸¹ Lord Ellenborough, however, accused the defence of making the request to create a popular effect, while Lauderdale believed that Erskine's partial list would not really protect the accused.⁸² The motion was defeated.⁸³ Ten days later, on 24 July, the House dealt with a variation of the witness list question. Erskine presented a petition from the Queen, seeking 'a specification of the place or places in which the Criminal Acts are charged to have been committed'.⁸⁴ Holland and the Chancellor debated whether the bill against the Queen was or ought to be as specifically framed as an indictment or as other bills of pains and penalties since the Revolution. In contrast with his earlier wish to conform as closely as possible

to regular legal procedure, Eldon argued that there could be no necessary analogy between the common law and a proceeding before Parliament. Holland agreed that the House could lay aside questions of law in favour of 'substantial justice', but he felt that substantial justice in this case warranted compliance with the Queen's request. The petition was not granted.

The next challenge from the defence followed the examination, cross-examination, and re-examination of the first prosecution witness. Brougham requested that the witness be recalled and subjected to a further cross-examination. The Chancellor objected, but relented when Brougham promised to limit himself to three to five questions.⁸⁵ Almost immediately, however, the Chancellor had cause to regret his leniency. Brougham grossly exceeded his three to five questions, and two days later he announced his intention of repeating the process with another prosecution witness. This announcement, and the likelihood that the examination of every important prosecution witness would become protracted and complicated, provoked a lengthy debate on the best way forward. Brougham based his request on the lack of a witness list. Because the defence had no prior knowledge of a prosecution witness, they could only cross-examine immediately on points that arose from the direct examination, and then return to matters that subsequently came to light.⁸⁶ This argument, apart from compensating the defence for the lack of a privilege to which they were not entitled, presented several procedural problems. Should the defence have complete freedom to choose whether and when it would conduct a second cross? When would the prosecution conduct its re-examination – only after the defence had either conducted a second cross or determined that it would not do so? How would the divided cross affect questioning by peers? Would this occur after the possible second re-examination? And if their questions revealed new information, might this provide grounds for a third cross-examination and re-examination? Eldon feared that the consequence of these deviations from regular practice would result in proceedings 'moving on in an endless circle.'⁸⁷

The decision to allow counsel to divide the cross-examination was reached by a tortuous route over the next few days. On 26 August the House decided that counsel should state any proposed alterations to the usual practice. On 28 August, however, that decision was rescinded, and counsel were informed that they could speak to Liverpool's motion, namely that cross-examination should proceed as usual, with the possibility of a further cross on a showing of sufficient grounds. Following statements by prosecution and defence counsel, Liverpool announced a wish to withdraw his motion. He was convinced, he said, that it would be unjust now to withdraw from the defence what had been granted, or seemed to have been granted to them previously. Lauderdale objected to this change of tack, claiming that 'such an instance of inconsistency and vacillation of opinion . . . never had before been exhibited'.⁸⁸ Eldon attempted to preserve something like regular procedure, but he was unwilling to dictate to the House.⁸⁹ An amended version of Liverpool's motion, in line

with his changed sentiments, was approved by a vote of 121–106, with Eldon and Lord Sidmouth, the Home Secretary, declining to support their colleague.

The third and most important challenge occurred midway through the defence, when it was alleged that several persons had attempted to bribe potential witnesses to testify against the Queen. Acknowledging, as all sides did, the offensiveness of the alleged conduct, they nevertheless wrestled with the question whether to admit evidence on the subject at present. Debate focused primarily on whether the bribery had tainted the evidence that had formed the basis of the bill or that had been adduced at trial, which in turn provoked two further questions. First, who was the principal behind the bill and the resulting trial, and what was the link, if any, between that principal and the alleged malefactors? Secondly, were any of the alleged malefactors in a position to affect the content of the evidence actually produced against the Queen?

The identity of the principal was not resolved. Liverpool accepted responsibility for the bill, but objected to the notion that either the Crown or the government was prosecuting the Queen.⁹⁰ Other peers suggested that the state, or the House of Lords itself, was the principal, motivated by a desire to see justice done.⁹¹ Attempts were made, not always successfully, to establish that the alleged malefactors were the agents of the Milan Commission. While not itself the principal, the Commission had produced the evidence which had gone to the Secret Committee and which had been relied upon by the counsel for the bill in producing their case. The practical effect of the alleged bribery, therefore, would have been to affect the evidence against the Queen, and render that evidence unreliable. This, according to the defence, justified a thorough, immediate inquiry into the issues of bribery, corruption, and a conspiracy against the Queen.⁹² On the other side, it was argued that the evidence of corruption of persons who actually testified, and of actual links between the alleged malefactors and the Milan Commission, was slight, and certainly did not justify such a lengthy divergence from their present course.⁹³

The above points, it is submitted, demand considerable powers of analysis when set out in a coherent form. This is not, however, the manner in which they were presented in the House of Lords. Over the course of seven days, from 13 to 20 October, the issues were circled, suggested, rephrased, and contrasted, in the context of arguments over the conduct of the particular individuals. For example, was evidence of the conduct of Guiseppe Sacchi admissible either because he might have been an agent of the Commission or because this evidence confuted his prior testimony, and did it matter that his alleged conduct involved the attempted bribery of persons who had not testified? Or, could the defence question a witness about the statements of one Ricanti, allegedly an agent of the Milan Commission, as a follow-on from similar questions having been permitted about the statements of one Restelli, when the grounds for admitting the statements of Restelli had been his inability to testify, and not because he was an agent of the Commission? Finally, the defence lawyers, in particular, argued very aggressively. Long before the judges

were even asked whether evidence of a conspiracy was admissible, the defence spoke as if the fact of a conspiracy had been proven. Brougham spoke of 'a conspiracy of the foulest kind' and Wilde stated that 'a detestable conspiracy had been formed' against the Queen.⁹⁴

To say that peers dealt ably with the bribery issue would overstate the case, as even the legally trained peers helped to confuse the discussion. Furthermore, arguments based on regular legal practice were repeatedly undercut by explicit demands that they conduct their proceedings according to a vague notion of 'fairness' and without reference to the rules of evidence or the opinions of the judges. Eldon, attempting to steer his colleagues along recognised legal channels without appearing to act against the will of the House, displayed a growing anxiety over offering an opinion. An objection to the request to view some confidential correspondence actually prompted the Chancellor to remark, that 'he did not mean to support the objection, as an objection; but . . . he desired not to be included in the number of those who thought that there was no objection to it'.⁹⁵ Undoubtedly the bribery issue severely complicated and slowed the trial. It is no wonder that the Earl of Darnley feared that they would never reach a satisfactory conclusion. He complained that 'when he came daily to that House, and saw the paraphernalia by which they were surrounded, he doubted whether he was not waking from some feverish dream'.⁹⁶ By late October, he was probably not the only person who was coming to regard the trial as a nightmare.

The arguments of counsel finally concluded on 30 October. Following the speeches of thirty peers, the vote on the second reading of the bill was taken on 6 November. It was approved by a vote of 119–94.⁹⁷ From the government's perspective this result was ominous. Eldon had predicted a majority of around 50, a conservative figure in the context of recent voting patterns.⁹⁸ The House then went into committee and debated, *inter alia*, whether to retain the divorce clause. They resolved this in the affirmative, by a vote of 129–62. The signals from this vote were mixed, as some peers supported the clause because they felt a divorce was justified, and some because they considered the clause as likely to sink the bill.⁹⁹ The vote suggested, however, that the government's usual supporters were divided and likely to prove unreliable. When the vote on the third reading was taken on 10 November the majority fell to 9.¹⁰⁰ Rightly deciding that the bill could not survive the Commons, Liverpool moved to delay consideration for six months. This was approved without a division. Effectively, the bill was thrown out.

The immediate result of the bill's failure was public adulation for the Queen. In the subsequent months, however, both her popularity and her value as a political weapon against the government or the King faded. Many people felt that the case against her had been proven, even if the House of Lords had not shown itself particularly keen to punish her. She became the object of sly humour, as with the popular riddle, 'Why is the Queen like the Bill of Pains and Penalties? Because they are both abandoned.'¹⁰¹ In February 1821

Parliament settled an annual sum of £50,000 upon her without a division, but attempts to discredit in the Lower House the government's conduct in the Upper were soundly defeated. Both Houses continued to receive petitions in support of the Queen until mid-February, after which public sympathy for her situation seems to have faded. Despite the decision by the privy council on 4 July that she could not be crowned against the King's wishes, she attempted to disrupt, or at least to attend, the coronation on 19 July. While she was cheered on her way to Westminster Abbey, her tearful retreat occasioned boos from the assembled crowds.¹⁰² This proved to be the nadir of her career. She did not live either to return to Italy or to endure further loss of status in England. Her health rapidly declined, and she died on 5 August 1821 following complications resulting from an intestinal obstruction

But what of the House of Lords itself? How did it bear the burdens imposed upon it during the summer and autumn of 1820? The verdict here must be largely positive, given the difficulty of the situation. Queen Caroline's 'case' was one that the government had tried hard to avoid. Legally obscure, politically dangerous, and generating considerable public disquiet, it had been forced upon ministers by the refusal of both the King and Queen to compromise. The bill of pains and penalties seemed to offer a means of transferring much of the burden and at least some of the opprobrium of the case onto the House of Lords. The judicial nature of the proceedings, the freedom with which the House could conduct the 'trial', and the obligation of maximum participation among peers were attractive features for ministers hoping to avoid full responsibility and also to shield the King. Each of these features, however, made the trial extremely awkward for the House. The pains and penalties process had a judicial component, but it was both cumbersome and unfamiliar to all those attempting to administer it. While the House enjoyed the power to regulate its conduct at every step, the majority of its members lacked the legal training necessary to use that power effectively. Indeed, many peers were not used to devoting substantial time and energy to public matters, and their enforced participation weakened the House as a deliberative body. For all its judicial trappings, moreover, the Queen's trial was not merely a judicial occasion, and the House of Lords was not merely a court. The House could not be expected wholly to abandon its political character, and the curious mixture of political signals received during the trial – the equivocal leadership from the government, the vocal public support for the Queen, and the suspicion that the conduct of neither royal party was particularly admirable – complicated any political element to the House's decision. Despite these formidable difficulties, the House avoided the pitfalls that could so easily have been its portion of this unfortunate proceeding. It was neither incompetent nor lacking in integrity. It did not give the government the easy victory that might have been anticipated.¹⁰³ On the contrary, having struggled through the complexities of the trial, the House convinced ministers that further hostilities against the Queen must cease. Ministers had chosen a bill of pains and penalties to placate

the King while avoiding the most obvious legal and political costs of a prosecution against the Queen. The House of Lords demonstrated to the King and the government that every 'trial' has its price.

Notes

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- 1 Queen Caroline has been the subject of many biographies, which naturally include the trial. A modern account of the trial is provided in Roger Fulford, *The Trial of Queen Caroline* (London: B. T. Batsford Ltd, 1967); and E. A. Smith, *A Queen on Trial: the Affair of Queen Caroline* (Stroud: Sutton, 1993) contains excerpts from contemporary letters, diaries, and other relevant documents. Several contemporary accounts of the trial were published, among them J. H. Adolphus, *A Correct, Full and Impartial Report of the Trial of Her Majesty, Caroline* (London: Jones & Co., 1820); Anon., *Trial of Queen Caroline*, 2 vols (London: W. Wright, 1821). The latter has been used in the present chapter, as providing the most complete account.
- 2 Tresham Lever (ed.), *The Letters of Lady Palmerston* (London: John Murray, 1957), p. 44, letter from Emily Lamb to Frederick Lamb, 20 August 1820.
- 3 The observations are those of Richard Rush, the American Secretary of State, and George Canning. R. Rush, *The Court of London from 1819 to 1825*, ed. B. Rush (London: Richard Bentley & Son, 1873), p. 271.
- 4 Thomas Creevey quoted this statement by Lord Granville. Sir H. Maxwell (ed.), *The Creevey Papers* (London: John Murray, 1923), p. 322.
- 5 Membership of the commission consisted of Lords Grenville, Erskine, Spencer, and Ellenborough, and Sir Samuel Romilly, the Solicitor General.
- 6 See, e.g., Anon., *Royal Investigation* (London: J. F. Hughes, 1807).
- 7 See, e.g., R. Edwards (ed.), *The Book!* (London: privately published, 1813); Spencer Perceval (ed.), *The Genuine Book*, 3rd edn (London: W. Lindsell, 1813); Spencer Perceval, *The Royal or Delicate Investigation* (London: Hamblin & Seyfang, 1813).
- 8 54 Geo. III c. 160 (1814).
- 9 Public Record Office, London (hereafter PRO), HO126(3) Cabinet minute draft, 1 August 1816; see also *ibid.*, the opinions of the law officers to Lord Chancellor Eldon, 29 July and 1 August 1820. Ministers felt that, having been made aware of the activities of the Austrian government, the Princess would be on her guard, and further investigations would prove fruitless.
- 10 The so-called 'Milan Commission' consisted of John Powell, a solicitor; William Cooke, a Chancery barrister; and Major, subsequently Colonel, Thomas Browne.
- 11 It was felt that, while the Regent might have been willing to forgo a divorce so long as his daughter remained his heir, her death removed any wish to protect her, and might inspire him to contract a second marriage for dynastic reasons. See, e.g., the discussion in C. Hibbert, *George IV* (London: Penguin Books, 1976), p. 541.
- 12 C. D. Yonge, *Life and Administration of Robert Banks Jenkinson, Earl of Liverpool*, 3 vols (London: John Murray, 1868), vol. 3, p. 17, Cabinet minute, 17 July 1819.
- 13 J. W. Croker maintained that he told ministers that the liturgy effectively determined the larger issue of the Queen's status. 'If she is fit to be introduced to the

- Almighty, she is fit to be received by men, and if we are to *pray* for her in Church we may surely bow to her at Court. The praying for her will throw a sanctity round her which the good and pious people of this country will never afterwards bear to be withdrawn.' Ministers had previously considered the legal aspects of the liturgy, but not the moral and religious aspects. L. J. Jennings (ed.), *The Croker Papers*, 2nd edn, 3 vols (London: John Murray, 1885), vol. 1, pp. 159–60.
- 14 British Library, London (hereafter BL), Liverpool papers, Additional MS 38565 f. 29, Cabinet minute, 10 February 1820.
 - 15 *Ibid.*, f. 79, letter from George IV to the Cabinet, 17 February 1820. See also *ibid.*, fos 49, 63, for an exchange of letters on 12 and 14 February 1820.
 - 16 Hansard, *Parl. Debs*, 2nd ser., vol. 1, cols 1152–60 (19 June 1820).
 - 17 *Ibid.*, col. 1320 (24 June 1820).
 - 18 *Journals of the House of Lords*, vol. 53, pp. 249–50 (4 July 1820).
 - 19 J. H. Baker, *An Introduction to English Legal History*, 4th edn (London: Butterworths, 2002), pp. 491–3, 495. See W. S. Holdsworth, *A History of English Law* 17 vols (London: Methuen & Co. Ltd, 1903–72), vol. 11, p. 629 fn. 9; A. H. Manchester, *Modern Legal History* (London: Butterworths, 1980), p. 374.
 - 20 See Baker, *English Legal History*, p. 493; PRO, HO126(3), letter from the law officers to the Lord Chancellor, 1 August 1816.
 - 21 25 Edw. III st. 5 c. 2 (1351).
 - 22 PRO, HO126(3), letter from the law officers [probably to the Chancellor], 17 January 1820.
 - 23 *Ibid.*
 - 24 *Ibid.*
 - 25 BL, Liverpool papers, Add. MS 38565 f. 29, Cabinet minute, 10 February 1820.
 - 26 *Ibid.*
 - 27 *Ibid.*
 - 28 Yonge, *Life of Liverpool*, vol. 3, pp. 104–6.
 - 29 See Liverpool's statement on the public nature of the bill, in Hansard, *Parl. Debs*, 2nd ser., vol. 2, cols 1384–5 (7 September 1820).
 - 30 Liverpool explained the decision to begin in the House of Lords when he introduced the bill on 5 July. See *ibid.*, cols 207–9. His reasoning found some favour with the opposition. See R. Grenville, 2nd Duke of Buckingham and Chandos, *Memoirs of the Court of George IV 1820–1830*, 2 vols (London: Hurst & Blackett, 1859), vol. 1, p. 49.
 - 31 A. Aspinall (ed.), *The Letters of King George IV 1812–1830*, 3 vols (Cambridge: Cambridge University Press, 1938), vol. 2, pp. 354–5.
 - 32 Advanced age was designated as over 70 years, and bereavement constituted a valid excuse where the death was of a wife, parent, or child. Foreign travel justified absence either when undertaken for royal service, or when commenced prior to 10 July, when the date for the second reading was announced. See Table 4.1.
 - 33 *Lords Journal*, vol. 53, p. 355 (25 July 1820).
 - 34 In addition to the twenty-one peers who were not members of the House of Lords, eighty-eight submitted excuses or had experienced some problem in receiving the summons. *Ibid.*, pp. 371–2 (17 August 1820).
 - 35 The average figure of 231.92 is based on those peers answering the daily call of the House between 17 August–6 November. This forty-nine-day period includes not only the 'trial' proper, but also the summing-up by counsel and peers.

- 36 A more precise figure of 52.72 can be obtained by averaging daily attendance in 1815, 1820, and 1825. See Table 4.2. The number of English peers in the House of Lords remained stable during the first quarter of the nineteenth century. John Cannon states that the peerage stood at 267 in January 1800, while a call of the House in February 1825 reveals a figure of 278. See J. Cannon, *Aristocratic Century* (Cambridge: Cambridge University Press, 1987), p. 15.
- 37 Lords were restricted as to the orders of admission they could grant. A rota system was imposed, with archbishops, dukes, marquesses, and earls giving orders to admit one person each on the first day, and all other ranks giving orders on the second day. *Lords Journal*, vol. 53, p. 369 (16 August 1820).
- 38 See Rush, *Court of London*, pp. 300–7.
- 39 To reduce noise and the possibility of disruption, vehicular traffic in front of Parliament was restricted during the hours when the House was sitting, and Household troops were deployed to control the anticipated crowds. *Journal*, vol. 53, pp. 367–8 (15 August 1820).
- 40 Anon., *Trial*, vol. 1, p. 321. On the general attitude of both Houses towards newspaper reporters, see Holdsworth, *English Law*, vol. 10, pp. 547–8.
- 41 Hansard, *Parl. Debs*, 2nd ser., vol. 2, col. 870 (23 August 1820).
- 42 Anon., *Trial*, vol. 1, p. 233.
- 43 C. Greville, *The Greville Memoirs*, ed. H. Reeve, 3 vols (London: Longmans, 1874), vol. 1, pp. 35–6.
- 44 F. Hawes, *Henry Brougham* (London: Jonathan Cape, 1957), p. 158. See also, Greville, *Greville Memoirs*, vol. 1, p. 38.
- 45 E. Phipps, *Memoirs of the Political and Military Life of Robert Plumer Ward*, 2 vols (London: John Murray, 1850), vol. 2, p. 81.
- 46 The following peers questioned witnesses: Alvanley, Anson, Auckland, Balcarras, Bathurst, Belhaven, Belmore, Blessington, Brownlow, Buckingham, Calthorpe, Carnarvon, Cathcart, Clarence, Clifden, Colville, Combermere, Darlington, Darnley, De Clifford, De Dunstanville, De Lawarr, Derby, Donoughmore, Downshire, Duncan, Dynevor, Eldon, Ellenborough, Enniskillen, Erskine, Falmouth, Gosforth, Grantham, Grantley, Grey, Grosvenor, Hamilton, Harrowby, Holland, Hood, Huntley, Kenyon, King, Kingston, Lansdowne, Lauderdale, Limerick, Liverpool, Mansfield, Melville, Morley, Morton, Oxford, Prudhoe, Redesdale, Richmond, Rosebury, Rosslyn, Rous, Walsingham, and Winchelsea.
- 47 See, e.g., Hansard, *Parl. Debs*, 2nd ser., vol. 2, col. 925 (24 August 1820); Anon., *Trial*, vol. 1, p. 254, vol. 2, p. 323.
- 48 Anon., *Trial*, vol. 1, p. 78.
- 49 Hansard, *Parl. Debs*, 2nd ser., vol. 2, col. 912 (24 August 1820). See also Anon., *Trial*, vol. 1, p. 151, for an anecdote Eldon contributed on the subject of oaths.
- 50 Hansard, *Parl. Debs*, 2nd ser., vol. 3, col. 381 (7 October 1820). It is difficult to determine whether Holland meant to be taken seriously. The image conjured up by his suggestion – of judges kept in isolation from the trial – is certainly in keeping with his reputation for arch humour. In the Queen's trial, however, the high court judges were summoned to explain the relevant legal principles but not to evaluate the evidence, and Holland may have felt that they could best speak to general principles if they were not exposed to, and perhaps influenced by, specific facts and opinions.
- 51 *Ibid.*, col. 388 (7 October 1820).

- 52 Phipps, *Plumer Ward Memoirs*, vol. 2, p. 66.
- 53 H. Brougham, Lord Brougham and Vaux, *The Life and Times of Henry Lord Brougham*, 3 vols (London: William Blackwood & Sons, 1871), vol. 2, p. 384. See also, Sir J. Arnould, *Memoir of Thomas, First Lord Denman*, 2 vols (London: Longmans, 1873), vol. 1, p. 171; H. E. Fox, 4th Baron Holland, *The Journal of the Hon. Henry Edward Fox 1818–1830*, ed. the Earl of Ilchester (London: Thornton Butterworth Ltd, 1923), p. 45.
- 54 Phipps, *Plumer Ward Memoirs*, vol. 2, p. 80 and fn; Greville, *Greville Memoirs*, vol. 1, p. 38.
- 55 For an assessment of Eldon's conduct during the Queen's trial, see R. A. Melikan, *John Scott, Lord Eldon (1751–1838) the Duty of Loyalty* (Cambridge: Cambridge University Press, 1999), pp. 281–94.
- 56 See, e.g., Hansard, *Parl. Debs*, 2nd ser., vol. 2, col. 848 (22 August 1820); Anon., *Trial*, vol. 2, pp. 293–4.
- 57 See, e.g., Hansard, *Parl. Debs*, 2nd ser., vol. 2, col. 971 (26 August 1820).
- 58 Copley (Lord Lyndhurst), Brougham (Lord Brougham and Vaux), and Wilde (Lord Truro) all held the Great Seal. Denman became chief justice of King's bench, and Tindal became chief justice of Common Pleas. Gifford also held the latter post, prior to becoming Master of the Rolls. Lushington and Robinson each presided in the admiralty court, and Williams became a judge in the court of King's bench.
- 59 See the discussion in Hansard, *Parl. Debs*, 2nd ser., vol. 2, col. 363 (11 July 1820).
- 60 Brougham stated that if the bill reached the Commons, he and Denman would refrain from voting upon it. *Ibid.*, col. 364 (11 July 1820).
- 61 Brougham, *Life of Brougham*, vol. 2, p. 381.
- 62 *Ibid.*, p. 396.
- 63 See, e.g., Hansard, *Parl. Debs*, 2nd ser., vol. 2, col. 1333 (7 September 1820).
- 64 See, e.g., the discussion in V. A. C. Gatrell, *The Hanging Tree: Execution and the English People (1770–1868)* (Oxford: Oxford University Press, 1994), p. 536.
- 65 Hardy's trial is found at T. J. Howell (ed.), *A Complete Collection of State Trials and Proceedings for High Treason and other Crimes and Misdemeanours*, 33 vols (London: T. C. Hansard, 1816–26), vol. 24, pp. 199–1408.
- 66 A breakdown of the number of days per year dedicated to the impeachment is provided in K. Feiling, *Warren Hastings* (London: Macmillan & Co., 1954), p. 352. As early as May 1790, Edmund Burke was complaining that, at most, a mere three hours per day were being spent on the Hastings' case. Hansard, *Parl. Debs*, 1st ser., vol. 28, col. 786 (11 May 1790).
- 67 Hon. F. Leveson Gower (ed.), *The Letters of Harriet Countess Granville 1810–45*, 2 vols (London: Longmans, 1894), vol. 1, p. 173.
- 68 Yonge, *Life of Liverpool*, vol. 3, p. 106, letter from Liverpool to George Canning, 12 September 1820.
- 69 H. Arbuthnot, *The Journal of Mrs Arbuthnot (1820–1832)*, ed. F. Bamford and the Duke of Wellington, 2 vols (London: Macmillan & Co., 1950), vol. 1, pp. 36–7.
- 70 H. R. V. Fox, 3rd Baron Holland, *Further Memoirs of the Whig Party 1807–1821*, ed. Lord Stavordale (London: John Murray, 1905), p. 289.
- 71 See P. Quennell (ed.), *The Private Letters of Princess Lieven to Prince Metternich 1820–6*, (London: John Murray, 1937), p. 70; J. Farington, *The Farington Diary*, ed. J. Greig, 8 vols (London: Hutchinson & Co., 1924), vol. 8, p. 267.

- 72 9 Geo. I c.17 (1722).
- 73 *Parl. Debs*, 2nd ser., vol. 2, col. 803 (21 August 1820).
- 74 *Ibid.*, cols 906–7, 914 (23, 24 September 1820).
- 75 See, e.g., Anon., *Trial*, vol. 1, pp. 94, 121–2, 443, vol. 2, p. 46.
- 76 See *ibid.*, vol. 1, p. 173. The issue of voting by absentees remained open, and the Queen raised it in a protest on 7 November. See *Parl. Debs*, 2nd ser., vol. 3, col. 1702.
- 77 *Ibid.*, vol. 2, cols 252–3 (6 July 1820).
- 78 *Parl. Debs*, 2nd ser., vol. 2, col. 315 (10 July 1820). See also cols 431–2 (14 July 1820).
- 79 *Ibid.*, col. 317 (10 July 1820). See also cols 440–5 (14 July 1820).
- 80 Of the 116 cases perused, only two mentioned witness lists, and in neither instance was it clear that the list had actually been produced. The committee considered twenty-four bills of attainder (1539–1746), twenty-seven bills of pains and penalties (1610–1805), and sixty-five impeachments (1620–1805). *Lords Journal*, vol. 53, pp. 307–8 (14 July 1820).
- 81 *Parl. Debs*, 2nd ser., vol. 2, col. 446 (14 July 1820).
- 82 *Ibid.*, cols 464, 470 (14 July 1820).
- 83 The vote was 28–78. *Ibid.*, col. 472 (14 July 1820).
- 84 *Lords Journal*, vol. 53, p. 352 (24 July 1820).
- 85 Anon., *Trial*, vol. 1, p. 164.
- 86 *Ibid.*, p. 199.
- 87 *Parl. Debs*, 2nd ser., vol. 2, col. 1058 (29 August 1820).
- 88 *Ibid.*, col. 1052 (29 August 1820).
- 89 *Ibid.*, col. 1058 (29 August 1820).
- 90 See, e.g., Liverpool's comments, *ibid.*, vol. 3, cols 680–1, 684 (16 October 1820).
- 91 See, e.g., the statements of Holland, Ellenborough, and Lansdowne, *ibid.*, cols 630–2, 683 (14, 16 October 1820).
- 92 See Brougham's assertions, *ibid.*, cols 688–9 (16 October 1820).
- 93 See the assertions of the Attorney General and Solicitor General at *ibid.*, cols 704–5, 722 (16 October 1820).
- 94 *Ibid.*, cols 699, 719 (16 October 1820).
- 95 *Ibid.*, col. 899 (20 October 1820).
- 96 *Ibid.*, col. 917 (20 October 1820).
- 97 Peers whose voting records thus far in the Queen's case would have justified the government's reliance on their support, but who voted against the second reading, included Arden, Loftus, Fitzgibbon, Selsea, Fisherwick, Berwick, Bagot, Walsingham, Dynevor, Clinton, Caledon, Enniskillen, Farnham, Gosford, Carrick, Mansfield, Egremont, Dartmouth, Plymouth, and Pembroke. Craven and Bradford were ill on 6 November, and several other potential supporters attended the proceedings on that day but failed to vote.
- 98 Phipps, *Plumer Ward Memoirs*, vol. 2, p. 69. The failure of opposition motions on significant political occasions in the preceding eighteen months indicates very considerable support for the government in the House of Lords.
- 99 On 1 September Liverpool had sought the King's authority to abandon the divorce clause before the defence began if judged advisable by ministers, and on 6 September the King had acquiesced. See Aspinall, *George IV Letters*, vol. 2, pp. 362, 366.

- 100 The following peers defected from the government side when final approval of the bill was sought: Bayning, Falmouth, Portsmouth, the Bishop of Gloucester, and the Archbishop of Tuam. Prudhoe, Gambier, Brownlow, Stamford, Thomond, Harrowby, and the Bishop of Chester were present but failed to vote. Lonsdale and Huntington were ill. Aylesford and the Bishop of Bristol (who had been present but failed to vote on the second reading) were excused. Most galling was the failure of Harrowby, the Lord President, to support the third reading.
- 101 C. Bury, *Diary of a Lady-in-Waiting* ed. A. F. Steuart, 2 vols (London: John Lane, 1908), vol. 2, p. 451.
- 102 See, e.g., Lever, *Palmerston Letters*, pp. 86–7, letter from E. Lamb to F. Lamb, 20 July 1821.
- 103 In a letter to the King prior to the trial, the Queen had complained that she could not receive a fair hearing in the Lords. Not only were ministers among her judges, it was ‘too notorious, that they have always a majority in the House’. BL, Liverpool papers, Add. MS 38565 f. 255, letter from Caroline to George IV, 7 August 1820.