



HENRY BROUGHAM

PER(FOR)MING THE DEFENSE

Mark Schoenfield

THE BILL OF PAINS AND PENALTIES has been compared with Clarence Thomas's confirmation and Bill Clinton's impeachment.¹ Both share with the 1820 spectacle, beyond the salacious details, the similarity that they were not legal trials and yet were conducted under the penumbra of law, as often casting shade as providing clarity for participants and extended audiences. On June 28, 1820, Henry Brougham addressed the Commons on the education of the poor, a matter "second to none in its magnitude or its importance."² He asserted this bill would benefit mankind long after "the differences which existed between the individuals (illustrious as they were) . . . should have been forgotten." Arguing for the "lower orders" – the capable working poor – which he parallels to the "lower house" of Commons, Brougham was shaping the public he would address in the upper house of the Lords.

The "trial" occurs when what legal historian John Langbein has described as the modern adversarial trial was emerging as a foundational structure of

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¹ Daniel Erskine, "Trial of Queen Caroline and the Impeachment of President Clinton: Law as a Weapon for Political Reform," *Washington University Global Studies Law Review* 7:1 (2008), 1-33. Jeffrey Rosen's *The Unwanted Gaze: The Destruction of Privacy in America* (New York: Vintage, 2001) uses the Queen Caroline affair to contextualize both Clarence Thomas and Bill Clinton (220-223).

² HC Deb (28 June 1820) vol. 2, col. 49. Available at: <https://api.parliament.uk/historic-hansard/commons/1820/jun/28/education-of-the-poor> (Accessed: 13 November 2019).

justice.³ A theatrical approach to this form of trial was to present the courtroom scene itself as duplicating the inequitable attack that had led up to it. Thus, Brougham orchestrated the Queen's "trial" as extending the malice of the king against her, and its extraordinary rules – for example not providing Counsel with a list of witnesses – as an intensification of royal malevolence. The prints projected this position throughout popular culture. Brougham was sometimes depicted holding a broom, sometimes replaced by one, and the emblem took on a chivalric overtone through its placement in allusive literary and historical scenes. Prints show him both boxing and dueling as metonymies for his legal and linguistic maneuvers. In "The Time Piece" (June 1820) (fig.1), an inset shows Brougham jabbing Castlereagh. In the retrospective (November 1820) "Horrida Bella", (fig.2) he grasps a paper inscribed "Truth," rolled as a sword, and teams with Denman to defeat the prosecuting Attorney- and Solicitor-General. Brougham's insistence on the right of cross-examination in representing the Queen solidified its function in the public imagination and in the periodical press's arsenal of literary technique. The witness Theodore Majocchi repeated "non mi ricordo" in response to Brougham's questions so often it became a catchphrase exploited across the pro-Queen press, in prose, poetry, and prints. Walter Scott once used it to respond to the question of whether he was the author of *Waverley*.⁴

In addition to cross-examination, Brougham strategically emphasized the uncertain consequences of the proceedings. He declared that only the utmost compulsion could drive him into the defenses of recrimination and of proving the King's prior marriage, but whether such compulsion might arise, he could not foresee. In his June 7 speech in Commons, he declared "all the private history of all those exalted individuals . . . might be forced into the conflict."⁵ When Leigh Hunt reprinted this threat in *The Examiner*,

³ John Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003).

⁴ Henry Brougham, *The Life and Times of Henry, Lord Brougham* (3 vols.; New York: Harper & Brothers, 1871-1872), 2:315.

⁵ HC Deb (7 June 1820) vol. 1, col. 940. Available at: <https://api.parliament.uk/historic-hansard/commons/1820/jun/07/motion-for-a-secret-committee-on-the> (Accessed: 13 November 2019).

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Figure 1. Title: *The Time Piece*. Creator: Robert Cruikshank. Source Title: George Humphrey shop album. Contributor: Lewis Walpole Library, Yale University. Identifier: Folio 75 H89 821 (Oversize) <http://findit.library.yale.edu/catalog/digcoll:4771991>.



Figure 2. Title: *Horrida Bella!* Creator: Theodore Lane (?). Source Title: *George Humphrey shop album*. Contributor: Lewis Walpole Library, Yale University. Identifier: Folio 75 H89 821 (Oversize) <https://orbis.library.yale.edu/vwebv/holdingsInfo?bibId=13854493>.

he inserted in italics: “If the King has a Green Bag, the Queen might have one too.”⁶ William Cobbett circulated this aphorism, part of what he calls “a string of terrifying hints,” as if spoken by Brougham: the Commons “must, after they have done with the green-bag of the King receive one on the part of the Queen.”⁷ George Cruikshank propelled this threat into visual culture with his print, “Ah! Sure such a pair . . .”, (fig.3) published June 23, 1820. In it, a pair of pear-shaped bags, with the king’s and queen’s head topping the larger and smaller respectively, play out the rancorous disagreement signaled by the Milan investigation. The king’s face is turned away from the queen with “terrified fury,” and she regards him with “demure provocation”⁸ as her ostrich feathers curl with comic menace toward his

⁶ Leigh Hunt, “United Parliament,” *The Examiner* 650 (June 11, 1820), 379.

⁷ William Cobbett, “To the Reformers,” *Cobbett’s Political Register*, 36:13 (June 10, 1820): 912.

⁸ *Catalogue of Prints and Drawings in the British Museum* (11 vols.; London, 1870-1954), v. 10, no. 13735.

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Figure 3. Title: "Ah! sure such a pair was never seen so justly form'd to meet by nature". Creator: George Cruikshank. Source Title: George Humphrey shop album. Contributor: Lewis Walpole Library, Yale University. Identifier: Folio 75 H89 821 (Oversize) <http://findit.library.yale.edu/catalog/digcoll:4771969>.

crown. The tongue of his belt squeezes through the buckle like a half-limp phallus, matched by her ribbon, tied off in a downward-facing V. Cruikshank attributes the idea to Brougham, using technical printer's terms that imply coordination: "Broom invt – G. Cruikshank fecit." This collaborative pairing is juxtaposed against the competitively paired "Old Sherry," the Whig Sheridan who provides the caption, and "Old Bags," the Tory Eldon to whom the print is ironically dedicated. The quotation is from Sheridan's *The Duenna*, at a particularly apt moment when the boorish Don Carlos is forced into civility. As Linda Troost notes, the "congratulatory song, clearly designed for a youth and a maid, is utterly inappropriate for two antiquated people marrying out of avarice."⁹ Cruikshank disrupts the actual

⁹ Linda Troost, "The Characterizing Power of Song in Sheridan's *The Duenna*," *Eighteenth-Century Studies* 20:2 (Winter 1986-1987), 164. Cruikshank had used the line in an 1809 print about the scandal regarding Mary Anne Clarke and the prince's brother.

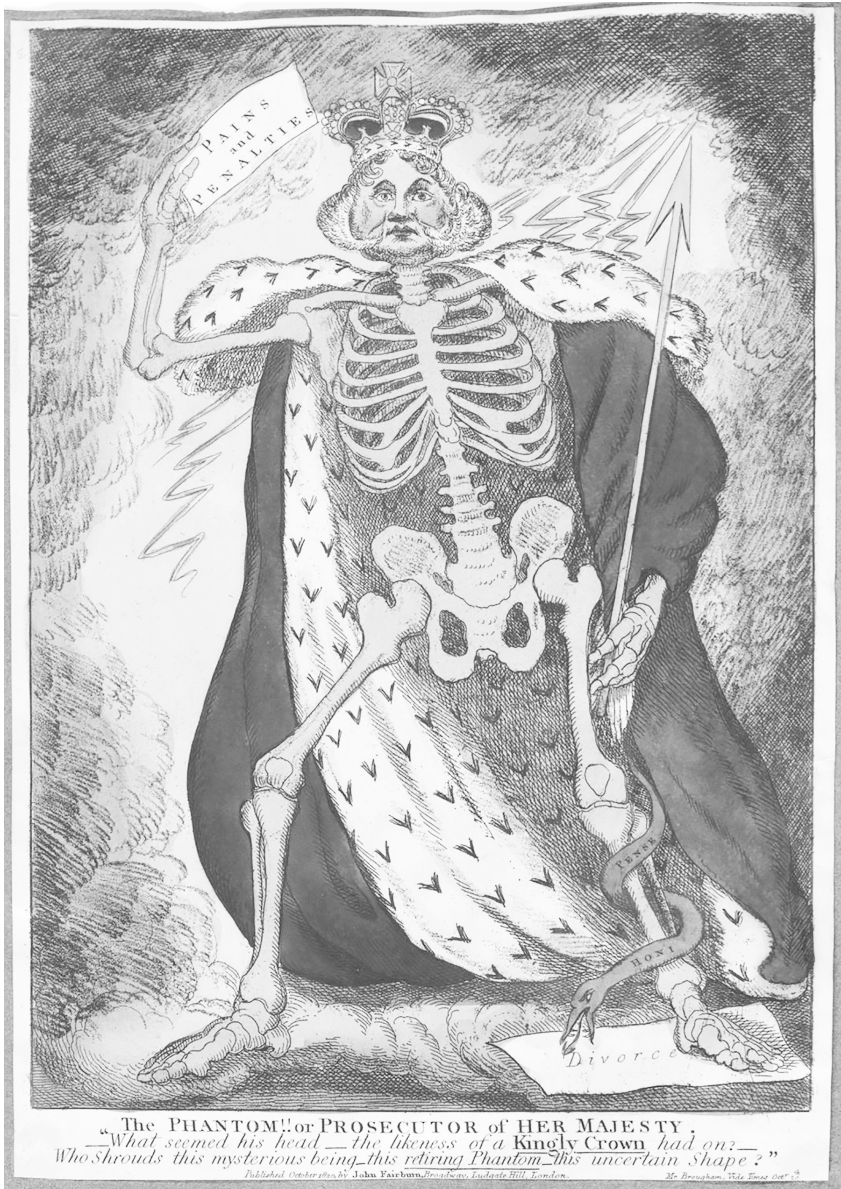


Figure 4. Title: The phantom!!, or, Prosecutor of Her Majesty. Publisher: John Fairburn. Source Title: George Humphrey shop album. Contributor: Lewis Walpole Library, Yale University. Identifier: Folio 75 H89 821 (Oversize) <http://findit.library.yale.edu/catalog/digcoll:4772006>.

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rhythm of the quotation, inserting the “such” into the line “Ah! sure [such] a pair was never seen / So justly form’d to meet by nature!,” and emphasizing the peculiarity of this couple and the moment into which they were dragging the nation.

Brougham exploited the detail that, unlike a trial, the Bill had no declared prosecutor, a piece of political theater given that George had indisputably instigated the process. At one point Brougham asked a witness, John Powell, “Who is your client or employer in the case?” The witness withdrew and Brougham unleashed a brief, allusive speech: “I have never been able to trace ‘the local habitation – the name’ of the unknown being”; the quoted phrase is Theseus, from *A Midsummer Night’s Dream*, the habitation and name is what the poet gives to “airy nothings” but in court, they are elements of a proper accusation. He transitions from a speech of resolution in a Shakespearean comedy to Satan’s encounter with death in Book Two of *Paradise Lost*. Death is the oxymoronic shape that has no shape and “What seem’d his head / The likeness of a kingly crown had on.”¹⁰ Milton’s point on the insubstantiality of death is transmuted into a materialistic attack on the king’s body, political shape, and sovereignty (although king, he had not yet been crowned, and the coronation was delayed for the Bill). The Times reported the speech on October 20, 1820, and within 10 days, Fairburn published the print, “The Phantom!! Or Prosecutor of Her Majesty.” (fig.4) The print recalls an earlier use of Milton’s quotation of the encounter at the gates of hell, James Gillray’s 1792’s “Sin, Death and the Devil,” (fig.5) published at another moment when the government hung in the balance. By posing the king as a skeletal Death and highlighting the reference to the crown (and the uncertain head on which it was placed), the Fairburn print unpacks the threat of exposure implicit in Brougham’s rhetorical pretense of not knowing who the prosecutor was. While the king holds a paper declaring “Pains and Penalties,” a

¹⁰ HC Deb (14 Oct. 1820) vol. 3, col. 641. Available at <https://api.parliament.uk/historic-hansard/lords/1820/oct/14/preamble> (Accessed: 14 November 2019). Charles Greville credits Spencer Perceval with suggesting the Miltonic allusion; Charles Greville, *The Greville Memoirs: A Journal of the Reigns of King George IV and King William IV* (3 vols.; London: Longmans, Green, 1874), 1:38-39.



Figure 5. Title: Sin, Death and the Devil. Creator: James Gillray. Publisher: Hannah Humphrey shop album. Contributor: Lewis Walpole Library, Yale University. Identifier: 792.06.09.01+ Impression 1 <http://findit.library.yale.edu/catalog/digcoll:551202>.

snake wrapped around his leg, writes “Divorce” with his tongue, highlighting the incompatibility of the procedure itself with at once the King’s desired outcome and his presumed monarchical commitment to justice.

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