

Sec. 4—Impeachment

some fundamental or essential principle of government or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers from improper motives or for an improper purpose.”⁸⁶⁹ Former Justice Benjamin Curtis controverted this argument, saying: “My first position is, that when the Constitution speaks of ‘treason, bribery, and other high crimes and misdemeanors,’ it refers to, and includes only, high criminal offences against the United States, made so by some law of the United States existing when the acts complained of were done, and I say that this is plainly to be inferred from each and every provision of the Constitution on the subject of impeachment.”⁸⁷⁰ The President’s acquittal by a single vote was no doubt not the result of a choice between the two theories, but the result may be said to have placed a gloss on the impeachment language approximating the theory of the defense.⁸⁷¹

The Nixon Impeachment Proceedings

For the first time in more than a hundred years,⁸⁷² Congress moved to impeach the President of the United States, a move forestalled only by the resignation of President Nixon on August 9, 1974.⁸⁷³ Three articles of impeachment were approved by the House Judi-

⁸⁶⁹ 1 TRIAL OF ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES ON IMPEACHMENT 88, 147 (1868).

⁸⁷⁰ *Id.* at 409.

⁸⁷¹ For an account of the Johnson proceedings, see WILLIAM H. REHNQUIST, *GRAND INQUESTS: THE HISTORIC IMPEACHMENTS OF JUSTICE SAMUEL CHASE AND PRESIDENT ANDREW JOHNSON* (1992).

⁸⁷² The only occasion before the Johnson impeachment when impeachment of a President had come to a House vote was the House’s rejection in 1843 of an impeachment resolution against President John Tyler. The resolution, which listed nine separate counts and which was proposed by a member rather than by a committee, was defeated by vote of 127 to 84. *See* 3 HINDS’ PRECEDENTS OF THE HOUSE OF REPRESENTATIVES § 2398 (1907); CONG. GLOBE, 27th Cong. 3d Sess. 144–46 (1843).

⁸⁷³ The President’s resignation did not necessarily require dismissal of the impeachment charges. Judgment upon conviction can include disqualification as well as removal. Art. I, § 3, cl. 7. Precedent from the 1876 impeachment of Secretary of War William Belknap, who had resigned prior to his impeachment by the House, suggests that impeachment can proceed even after a resignation. *See* 3 HINDS’ PRECEDENTS OF THE HOUSE OF REPRESENTATIVES, § 2445 (1907). The Belknap precedent may be somewhat weakened, however, by the fact that his acquittal was based in part on the views of some Senators that impeachment should not be applied to someone no longer in office, *id.* at § 2467, although the Senate had earlier rejected (by majority vote of 37–29) a resolution disclaiming jurisdiction, and had adopted by vote of 35–22 a resolution affirming that result. *See id.* at § 2007 for an extensive summary of the Senate’s consideration of the issue. *See also id.*, § 2317 (it had been conceded during the 1797 proceedings against Senator William Blount, who had been sequestered from his seat in the Senate, that an impeached officer could not escape punishment by resignation).