

**Sec. 4—Impeachment**

which Judge Pickering was impeached and convicted focused on allegations of mishandling a case before him and appearing on the bench in an intemperate and intoxicated state.<sup>864</sup> Both Judge Archbald and Judge Ritter were convicted on articles of impeachment that charged questionable conduct probably not amounting to indictable offenses.<sup>865</sup>

Of the three most recent judicial impeachments, Judges Claiborne and Nixon had previously been convicted of criminal offenses, and Judge Hastings had been acquitted of criminal charges after trial. The impeachment articles against Judge Hastings charged both the conduct for which he had been indicted and trial conduct. A separate question was what effect the court acquittal should have had.<sup>866</sup>

Although the language of the Constitution makes no such distinction, some argue that, because of the different nature of their responsibilities and because of different tenure, different standards should govern impeachment of judges and impeachment of executive officers.<sup>867</sup>

**The Johnson Impeachment**

President Andrew Johnson was impeached by the House on the ground that he had violated the “Tenure of Office” Act<sup>868</sup> by dismissing a Cabinet chief. The theory of the proponents of impeachment was succinctly put by Representative Butler, one of the managers of the impeachment in the Senate trial. “An impeachable high crime or misdemeanor is one in its nature or consequences subversive of

O. Douglas in 1970). For a critique of these views, see Paul S. Fenton, *The Scope of the Impeachment Power*, 65 NW. U. L. REV. 719 (1970), reprinted in Staff of the House Committee on the Judiciary, 105th Cong., *Impeachment: Selected Materials 1801–03* (Comm. Print. 1998).

<sup>864</sup> See 3 HINDS’ PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §§ 2319–2341 (1907)

<sup>865</sup> Ten Broek, *Partisan Politics and Federal Judgeship Impeachments Since 1903*, 23 MINN. L. REV. 185 (1939). Judge Ritter was acquitted on six of the seven articles brought against him, but convicted on a seventh charge that summarized the first six articles and charged that the consequence of that conduct was “to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the Federal judiciary, and to render him unfit to continue to serve as such judge.” This seventh charge was challenged unsuccessfully on a point of order, but was ruled to be a separate charge of “general misbehavior.”

<sup>866</sup> Warren S. Grimes, *Hundred-Ton-Gun Control: Preserving Impeachment as the Exclusive Removal Mechanism for Federal Judges*, 38 UCLA L. REV. 1209, 1229–1233 (1991).

<sup>867</sup> See, e.g., Frank O. Bowman, III and Stephen L. Sepinuck, “High Crimes and Misdemeanors”: *Defining the Constitutional Limits on Presidential Impeachment*, 72 S. CAL. L. REV. 1517, 1534–38 (1999). Congressional practice may reflect this view. Judges Ritter and Claiborne were convicted on charges of income tax evasion, while the House Judiciary Committee voted not to press such charges against President Nixon. So too, the convictions of Judges Hastings and Nixon on perjury charges may be contrasted with President Clinton’s acquittal on a perjury charge.

<sup>868</sup> Act of March 2, 1867, ch. 154, 14 Stat. 430.