persons whom it has convicted. In the 1936 trial of Judge Ritter, the Senate determined that removal is automatic upon conviction, and does not require a separate vote.[843] This practice has continued. Because conviction requires a two-thirds vote, this means that removal can occur only as a result of a two-thirds vote. Unlike removal, disqualification from office is a discretionary judgment, and there is no explicit constitutional linkage to the two-thirds vote on conviction. Although an argument can be made that disqualification should nonetheless require a two-thirds vote,[844] the Senate has determined that disqualification may be accomplished by a simple majority vote.[845]

Impeachable Offenses

The Convention came to its choice of words describing the grounds for impeachment after much deliberation, but the phrasing derived directly from the English practice. On June 2, 1787, the framers adopted a provision that the executive should "be removable on impeachment & conviction of mal-practice or neglect of duty."[846] The Committee of Detail reported as grounds "Treason (or) Bribery or Corruption."[847] And the Committee of Eleven reduced the phrase to "Treason, or bribery."[848] On September 8, Mason objected to this limitation, observing that the term did not encompass all the conduct that should be grounds for removal; he therefore proposed to add "or maladministration" following "bribery." Upon Madison's objection that "[s]o vague a term will be equivalent to a tenure during pleasure of the Senate," Mason suggested "other high crimes & misdemeanors," which was adopted without further recorded debate.[849]

The phrase "high crimes and misdemeanors" in the context of impeachments has an ancient English history, first turning up in

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[843] 3 Deschler's Precedents of the United States House of Representatives ch. 14, § 13.9.

[844] *See* Michael J. Gerhardt, The Federal Impeachment Process: A Constitutional and Historical Analysis 77–79 (2d ed. 2000).

[845] The Senate imposed disqualification twice, on Judges Humphreys and Archbald. In the Humphreys trial the Senate determined that the issues of removal and disqualification are divisible, 3 Hinds' Precedents of the House of Representatives § 2397 (1907), and in the Archbald trial the Senate imposed judgment of disqualification by vote of 39 to 35. 6 Cannon's Precedents of the House of Representatives § 512 (1936). During the 1936 trial of Judge Ritter, a parliamentary inquiry as to whether a two-thirds vote or a simple majority vote is required for disqualification was answered by reference to the simple majority vote in the Archbald trial. 3 Deschler's Precedents ch. 14, § 13.10. The Senate then rejected disqualification of Judge Ritter by vote of 76–0. 80 Cong. Rec. 5607 (1936).

[846] 1 M. Farrand, *supra*, at 88.

[847] 2 M. Farrand at 172, 186.

[848] Id. at 499.

[849] Id. at 550.