Sec. 4—Impeachment

Finally, the Clinton impeachment raised the issue of what the threshold is for "high crimes and misdemeanors." While the Nixon charges were premised on the assumption that an abuse of power need not be a criminal offense to be an impeachable offense,[889] the Clinton proceedings—or at least the perjury charge—raised the issue of whether criminal offenses that do not rise to the level of an abuse of power may nonetheless be impeachable offenses.[890] The House's vote to impeach President Clinton arguably amounted to an affirmative answer,[891] but the Senate's acquittal leaves the matter somewhat unsettled.[892] There appeared to be broad consensus in the Senate that some private crimes not involving an abuse of power (*e.g.*, murder for personal reasons) are so outrageous as to constitute grounds for removal,[893] but there was no consensus on where the threshold for outrageousness lies, and there was no consensus that the perjury and obstruction of justice with which Presi-

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[889] According to one scholar, the three articles of impeachment against President Nixon epitomized the "paradigm" for presidential impeachment—abuse of power in which there is "not only serious injury to the constitutional order but also a nexus between the misconduct of an impeachable official and the official's formal duties." Michael J. Gerhardt, *The Lessons of Impeachment History*, 67 GEO. WASH. L. REV. 603, 617 (1999).

[890] Although committing perjury in a judicial proceeding—regardless of purpose or subject matter—impedes the proper functioning of the judiciary both by frustrating the search for truth and by breeding disrespect for courts, and consequently may be viewed as an (impeachable) "offense against the state" (see 145 CONG. REC. S1556 (daily ed. Feb. 12, 1999) (statement of Sen. Thompson)), such perjury arguably constitutes an abuse of power only if the purpose or subject matter of the perjury relates to official duties or to aggrandizement of power. Note that one of the charges against President Clinton recommended by the House Judiciary Committee but rejected by the full House—providing false responses to the Committee's interrogatories—was squarely premised on an abuse of power.

[891] The House vote can be viewed as rejecting the views of a number of law professors, presented in a letter to the Speaker entered into the Congressional Record, arguing that high crimes and misdemeanors must involve "grossly derelict exercise of official power." 144 CONG. REC. H9649 (daily ed. Oct. 6, 1998).

[892] Some Senators who explained their acquittal votes rejected the idea that the particular crimes that President Clinton was alleged to have committed amounted to impeachable offenses (*see*, *e.g.*, 145 CONG. REC. S1560 (daily ed. Feb. 12, 1999) (statement of Sen. Moynihan); id. at 1601 (statement of Sen. Lieberman)), some alleged failure of proof (*see*, *e.g.*, id. at 1539 (statement of Sen. Specter); id. at 1581 (statement of Sen. Akaka)), and some cited both grounds (*see*, *e.g.*, id. at S1578–91 (statement of Sen. Leahy), and id. at S1627 (statement of Sen. Hollings)).

[893] *See*, *e.g.*, 145 CONG. REC. S1525 (daily ed. Feb. 12, 1999) (statement of Sen. Cleland) (accepting the proposition that murder and other crimes would qualify for impeachment and removal, but contending that "the current case does not reach the necessary high standard"); id. at S1533 (statement of Sen. Kyl) (impeachment cannot be limited to wrongful official conduct, but must include murder); and id. at S1592 (statement of Sen. Leahy) (acknowledging that "heinous" crimes such as murder would warrant removal). This idea, incidentally, was not new; one Senator in the First Congress apparently assumed that impeachment would be the first recourse if a President were to commit a murder. IX DOCUMENTARY HISTORY OF THE FIRST FEDERAL CONGRESS, 1789–1790, THE DIARY OF WILLIAM MACLAY AND OTHER NOTES ON SENATE DEBATES 168 (Kenneth R. Bowling and Helen E. Veit, eds. 1988).