dent Clinton was charged were so outrageous as to impair his ability to govern, and hence to justify removal.[894] Similarly, the almost evenly divided Senate vote to acquit meant that there was no consensus that removal was justified on the alternative theory that the alleged perjury and obstruction of justice so damaged the judiciary as to constitute an impeachable "offense against the state." [895]

Judicial Review of Impeachments

It was long assumed that no judicial review of the impeachment process was possible, that impeachment presents a true "political question" case, i.e., that the Constitution's conferral on the Senate of the "sole" power to try impeachments is a textually demonstrable constitutional commitment of trial procedures to the Senate to decide without court review. That assumption was not contested until very recently, when Judges Nixon and Hastings challenged their Senate convictions.[896]

In the Judge Nixon case, the Court held that a claim to judicial review of an issue arising in an impeachment trial in the Senate presents a nonjusticiable "political question." [897] Specifically, the Court rejected a claim that the Senate had departed from the meaning of the word "try" in the impeachment clause by relying on a special committee to take evidence, including testimony. But the Court's

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[894] One commentator, analogizing to the impeachment and conviction of Judge Claiborne for income tax evasion, viewed the basic issue in the Clinton case as whether his alleged misconduct was so outrageous as to "effectively rob[ ] him of the requisite moral authority to continue to function as President." Gerhardt, supra n.817, at 619. Under this view, the Claiborne conviction established that income tax evasion by a judge, although unrelated to official duties, reveals the judge as lacking the unquestioned integrity and moral authority necessary to preside over criminal trials, especially those involving tax evasion.

[895] Senator Thompson propounded this theory in arguing that "abuse of power" is too narrow a category to encompass all forms of subversion of government that should be grounds for removal. 145 CONG. REC. S1556 (daily ed. Feb. 12, 1999).

[896] Both judges challenged the use under Rule XI of a trial committee to hear the evidence and report to the full Senate, which would then carry out the trial. The rule was adopted in the aftermath of an embarrassingly sparse attendance at the trial of Judge Louderback in 1935. National Comm. Report, *supra* at 50–53, 54–57; Grimes, *supra* at 1233–37. In the Nixon case, the lower courts held the issue to be non-justiciable (Nixon v. United States, 744 F. Supp. 9 (D.D.C. 1990), *aff'd*, 938 F.2d 239 (D.C. Cir. 1991), but a year later a district court initially ruled in Judge Hastings' favor. Hastings v. United States, 802 F. Supp. 490 (D.D.C. 1992), vacated, 988 F.2d 1280 (D.C. Cir. 1993).

[897] Nixon v. United States, 506 U.S. 224 (1993). Nixon at the time of his conviction and removal from office was a federal district judge in Mississippi.