this interpretation that the major arguments, scholarly and political, have concerned the question of whether judges, as well as others, are subject to impeachment for conduct that does not constitute an indictable offense, and the question of whether impeachment is the exclusive removal device for judges.[841]

Judgment—Removal and Disqualification

Article II, section 4 provides that officers impeached and convicted "shall be removed from office"; Article I, section 3, clause 7 provides further that "judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States." These restrictions on judgment, both of which relate to capacity to hold public office, emphasize the non-penal nature of impeachment, and help to distinguish American impeachment from the open-ended English practice under which criminal penalties could be imposed.[842]

The plain language of section 4 seems to require removal from office upon conviction, and in fact the Senate has removed those

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liam Belknap (acquitted); President Andrew Johnson (acquitted); and President William J. Clinton (acquitted). For summary and discussion of the earlier cases, *see* CONSTITUTIONAL ASPECTS OF WATERGATE: DOCUMENTS AND MATERIALS (A. Boyan ed., 1976); and Paul S. Fenton, *The Scope of the Impeachment Power*, 65 NW. U. L. REV. 719 (1970) (appendix), *reprinted in* Staff of the House Committee on the Judiciary, 105th Cong., Impeachment: Selected Materials 1818 (Comm. Print. 1998).

[841] It has been argued that the impeachment clause of Article II is a limitation on the power of Congress to remove judges and that Article III is a limitation on the executive power of removal, but that it is open to Congress to define "good behavior" and establish a mechanism by which judges may be judicially removed. Shartel, *Federal Judges—Appointment, Supervision, and Removal—Some Possibilities Under the Constitution*, 28 MICH. L. REV. 485, 723, 870 (1930). Proposals to this effect were considered in Congress in the 1930s and 1940s and revived in the late 1960s, stimulating much controversy in scholarly circles. *E.g.*, Kramer & Barron, *The Constitutionality of Removal and Mandatory Retirement Procedures for the Federal Judiciary: The Meaning of "During Good Behavior,"* 35 GEO. WASH. L. REV. 455 (1967); Ziskind, *Judicial Tenure in the American Constitution: English and American Precedents*, 1969 SUP. CT. REV. 135; Berger, *Impeachment of Judges and "Good Behavior" Tenure*, 79 YALE L. J. 1475 (1970). Congress did in the Judicial Conduct and Disability Act of 1980, Pub. L. 96–458, 94 Stat. 2035, 28 U.S.C. § 1 note, 331, 332, 372, 604, provide for disciplinary powers over federal judges, but it specifically denied any removal power. The National Commission, supra at 17–26, found impeachment to be the exclusive means of removal and recommended against adoption of an alternative. Congress repealed 28 U.S.C. § 372 in the Judicial Improvements Act of 2002, Pub. L. 107–273 and created a new chapter (28 U.S.C. §§ 351–64) dealing with judicial discipline short of removal for Article III judges, and authorizing discipline including removal for magistrate judges. The issue was obliquely before the Court as a result of a judicial conference action disciplining a district judge, but it was not reached, Chandler v. Judicial Council, 382 U.S. 1003 (1966); 398 U.S. 74 (1970), except by Justices Black and Douglas in dissent, who argued that impeachment was the exclusive power.

[842] *See* discussion supra of the differences between English and American impeachment.