SUPREME COURT OF THE UNITED STATES

No. 91–740

WALTER L. NIXON, PETITIONER *v.* UNITED STATES ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[January 13, 1993]

JUSTICE SOUTER, concurring in the judgment.

I agree with the Court that this case presents a nonjusticiable political question. Because my analysis differs somewhat from the Court's, however, I concur in its judgment by this separate opinion.

As we cautioned in *Baker* v. *Carr*, 369 U. S. 186, 210–211 (1962), "the `political question' label" tends "to obscure the need for case-by-case inquiry." The need for such close examination is nevertheless clear from our precedents, which demonstrate that the functional nature of the political question doctrine requires analysis of "the precise facts and posture of the particular case," and precludes "resolution by any semantic cataloguing," *id.*, at 217:

> "Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Ibid.*

Whatever considerations feature most prominently

in a particular case, the political question doctrine is "essentially a function of the separation of powers," *ibid.*, existing to restrain courts "from inappropriate interference in the business of the other branches of Government," *United States* v. *Munoz-Flores*, 495 U. S. 385, 394 (1990), and deriving in large part from prudential concerns about the respect we owe the political departments. See *Goldwater* v. *Carter*, 444 U. S. 996, 1000 (1979) (Powell, J., concurring in judgment); A. Bickel, The Least Dangerous Branch 125–126 (2d ed. 1986); Finkelstein, Judicial Self-Limitation, 37 Harv. L. Rev. 338, 344–345 (1924). Not all interference is inappropriate or disrespectful, however, and application of the doctrine ultimately turns, as Learned Hand put it, on "how importunately the occasion demands an answer." L. Hand, The Bill of Rights 15 (1958).

This occasion does not demand an answer. The Impeachment Trial Clause commits to the Senate "the sole Power to try all Impeachments," subject to three procedural requirements: the Senate shall be on oath or affirmation; the Chief Justice shall preside when the President is tried; and conviction shall be upon the concurrence of two-thirds of the Members present. U. S. Const., Art. I, §3, cl. 6. It seems fair to conclude that the Clause contemplates that the Senate may determine, within broad boundaries, such subsidiary issues as the procedures for receipt and consideration of evidence necessary to satisfy its duty to "try" impeachments. Other significant considerations confirm a conclusion that this case presents a nonjusticiable political question: the "unusual need for unquestioning adherence to a political decision already made," as well as "the potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Baker*, *supra*, at 217. As the Court observes, see *ante*, at 11–12, judicial review of an impeachment trial would under the best of circumstances entail significant disruption of government.

One can, nevertheless, envision different and unusual circumstances that might justify a more searching review of impeachment proceedings. If the Senate were to act in a manner seriously threatening the integrity of its results, convicting, say, upon a coin-toss, or upon a summary determination that an officer of the United States was simply "`a bad guy,'" *ante*, at 2 (WHITE, J., concurring in judgment), judicial interference might well be appropriate. In such circumstances, the Senate's action might be so far beyond the scope of its constitutional authority, and the consequent impact on the Republic so great, as to merit a judicial response despite the prudential concerns that would ordinarily counsel silence. "The political question doctrine, a tool for maintenance of governmental order, will not be so applied as to promote only disorder." *Baker*, *supra*, at 215.