

Project Update

Congress, the Supreme Court, and Judicial Independence

At a time of increasingly contentious hearings over federal judicial appointments and growing disagreements about the fundamental roles of the legislative and judicial branches of the federal government, the Academy continues its exploration of the changing relationship between Congress and the Court.

As co-chairs of the project Jesse Choper (Boalt Hall School of Law, UC Berkeley) and Robert Post (Yale Law School) have observed: “When the framers of the U.S. Constitution separated the federal government into three distinct branches, Congress and the Supreme Court were designed to face each other at arm’s length. Following a period of considerable tension and conflict, the relationship between the federal legislature and judiciary stabilized in the last years of the New Deal. Although it has subsequently encountered various periods of discord, the equilibrium has been significantly disrupted since the mid-1990s. The controversy now building between Congress and the Court could reach historic proportions.” The Academy project brings to-

gether scholars, members of Congress, Supreme Court justices, and federal judges for discussion and analysis of the issues underlying this increasingly adversarial relationship.

Last spring, the second in a series of public meetings and private conversations about Congress and the Court took place in Washington, D.C. On May 25, 2003, Fellows and guests attended a meeting on “The Independence of the Federal Judiciary,” held at the Library of Congress. Speakers included Professor Judith Resnik (Yale Law School), Judge Danny Boggs (U.S. Court of Appeals, Sixth Circuit), and Representative Howard Berman (D-California), with former White House Counsel, Congressman, and Federal Judge Abner Mikva (University of Chicago) serving as moderator. Panelists considered whether, how, and to what extent Congress has recently used its constitutional prerogatives to encroach on judicial independence.

Professor Resnik focused on the proliferation of federal judges in both courthouses and administra-



Attending the May Stated Meeting: Supreme Court Justices Ruth Bader Ginsburg and David Souter, President of the Academy Patricia Meyer Spacks, Supreme Court Justice Stephen G. Breyer, and President of the Carnegie Institution of Washington Richard Meserve

tive agencies that has made the federal judiciary increasingly reliant on Congress for its staffing and funding needs. In particular, she pointed to the large numbers of judges who have neither life tenure nor protected salaries – two conditions established by the Constitution as what she termed “hallmarks of judicial independence.” At the same time, she noted that the federal judiciary, through the Judicial Conference of the United States (a group of fewer than thirty life-tenured judges), now collectively “educates, plans, lobbies, and opines” on behalf of “the Judiciary” on issues including whether Congress should create new federally enforceable rights. Despite the new challenges they pose, neither the many judges who lack life tenure nor the changing activities of judges who have life tenure have become a focus of discussions about judicial independence.

Judge Boggs expressed confidence that the “independence of the judiciary remains intact and largely unthreatened.” The chief perils to judicial independence, he said, stem from administrative encroachments by Congress – notably, its refusal to raise judges’ pay in pace with inflation – and the increasing politicization of the confirmation process.

Congressman Berman – while asserting that there is no “bright line” between “appropriate and inappropriate” forms of regulation – maintained that “it’s appropriate for Congress to regulate the administration of the judicial branch, but not so appropriate for it to try to regulate the judicial function.” As an example of unwarranted congressional interference in judicial matters he cited mandatory minimum sentencing, which substitutes uniform, externally imposed rules for the exercise of discretion by individual judges.

Also in May, a second off-the-record conversation between Supreme Court Justices Stephen G. Breyer, Ruth Bader Ginsburg, Sandra Day O’Connor, and David Souter, as well as federal judges, members of Congress, legal scholars, and political scientists, was held at the Supreme Court. This exchange was intended to facilitate communication between Congress and the federal courts and to develop an agenda for future scholarly research.

A full account of the May 2003 panel will appear in the *Bulletin*’s Winter 2004 issue. ■



Speakers at the May 2003 Congress and the Court Stated Meeting: Judith Resnik (Yale Law School), Abner Mikva (moderator, University of Chicago), Judge Danny Boggs (U.S. Court of Appeals, Sixth Circuit), and Representative Howard Berman (D-California)

Energy, Ecology, and Security

Scientists know a good deal about the overall nature, direction, and significance of human-induced climate change, and about the patterns of global energy use that appear to be causing it. Experts on energy and global security have studied the economic and security ramifications of current patterns of oil production and demand. Yet no one so far has examined the complex interactions among energy use, climate change, economic development, and security that any comprehensive response to the problem of global warming must consider.

A new Academy project aims to lay the groundwork for just such a comprehensive approach. Co-chaired by John Steinbruner (University of Maryland) and John Holdren (Harvard University), the project on Energy, the Environment, and Global Security will bring together experts on climate change, ecology, energy, economics, and global security to address one of the most urgent and complex problems facing the world community today. (See page 24 for the Stated Meeting Report “Environmental Change and the Human Condition,” based on John Holdren’s address at the 1864th Stated Meeting of the Academy in November 2002.)

A steering committee, consisting of Steinbruner, Holdren, Ralph Cicerone (UC Irvine), and William Schlesinger (Duke University), has agreed that the project should focus on the varying regional impacts of climate change, their likely socioeconomic effects, and the political and security questions that will arise from efforts to mitigate and distribute the resulting burdens. Steinbruner is currently supervising a survey of existing research in these relevant areas.

Fostering Corporate Responsibility

In the wake of the recent scandals at Enron, WorldCom, Tyco, and many other large publicly held American corporations, Congress passed the Sarbanes-Oxley Act of 2002, and the stock exchanges began amending their listing requirements to provide new protections for investors. Yet in the view of many scholars and practitioners, regulation alone will not suffice to make corporate America and its related institutions more trustworthy.

This spring, the Academy’s project Corporate Responsibility: Beyond Regulation sponsored workshops focused on two key topics: the importance of values in guiding corporate conduct, and the roles of various groups in upholding or, in many recent cases, failing to uphold basic values. The Corporate Responsibility project is co-chaired by Fellows Martin Lipton (Wachtell, Lipton, Rosen & Katz) and Larry Sonsini (Wilson Sonsini Goodrich & Rosati) and Professor Jay Lorsch of Harvard Business School.

In a paper presented at the House of the Academy on April 28, 2003, Fellow John Reed, the recently ap-



Two of the co-chairs of the Corporate Responsibility project: Martin Lipton (Wachtell, Lipton, Rosen & Katz) and Jay Lorsch (Harvard Business School)

pointed interim chair of the New York Stock Exchange, attributed today’s failures of “integrity and responsibility” in corporate America to an overemphasis on short-term shareholder value. As an alternative he proposed a standard of “evolutionary success,” a way of evaluating corporate performance that considers not just the immediate interests of shareholders, but also a firm’s place within a broader “environment” of customers, competitors, regulators, and society at large. Reed also addressed the responsibilities of boards of directors; structural risks to corporate integrity, such as the links between the underwriting and retail distribution functions of investment banks;

and the need for greater professionalism among groups such as auditors and lawyers.

The project’s second workshop, held at NYU’s Center for Law & Business on May 19 – 20, 2003, consisted of panel discussions on each of six “gatekeeper” professions and profession-like groups: regulators, auditors, journalists, lawyers, investment bankers, and corporate directors. Workshop participants addressed such topics as the links between lax professional conduct and confusion about who the “client” is (e.g., auditors serving management rather than boards or shareholders); the distorting effects of market-based relationships and incentives on professional values; and the meaning of professionalism in a business context.

The Academy will publish the essays developed in connection with the spring workshops as an Occasional Paper. It also plans to issue a set of recommendations for practice and an agenda for future research. Lead papers are being prepared by John Reed, William Kinney, Donald Langevoort, Geneva Overholser, William Allen and Geoffrey Miller, Felix Rohatyn, and Martin Lipton and Jay Lorsch, among others. ■



William Allen (NYU School of Law), Geoffrey Miller (NYU School of Law), Richard Painter (University of Illinois Law School), and other members of the New York workshop on Corporate Responsibility

“We know that we will need protective policies. We do not yet know enough to devise them,” said Steinbruner regarding the effects of human activity on the global environment. “In this situation, it will be important to develop a much better understanding of the relationships between economic

growth, social equity, environmental impact, and security policy.”

Previous work in this area by the Academy and its Committee on International Security Studies has helped to broaden the definition of “international security” to reflect the changed realities of the post-cold war world. “The sub-

ject of this new project is exactly the kind of complex, politically difficult problem that the Academy, with its interdisciplinary focus and reputation for non-partisanship, is especially well positioned to address,” said Neal Lane (Rice University), one of the project’s advisors. ■

The Humanities Reconsidered

According to Patricia Meyer Spacks (University of Virginia), president of the Academy and co-chair of the Humanities and Culture Initiative, “There is a real need to explain the humanities to people who are not directly or professionally concerned with them, just as there is a need to remind ourselves of the enormous diversity of what constitutes the humanities in practice in this country.” Two projects in the Initiative – one focused on gathering data about the current state of the humanities, the other on exploring their development over the course of the twentieth century – are advancing knowledge about the role of the humanities in contemporary American life.

The Humanities Indicators project, led by co-chairs Francis Oakley (Williams College) and Stephen Raudenbush (University of Michigan), has been designed to provide educators, policymakers, and the public with reliable data on topics such as funding (public and private), faculty positions, undergraduate and graduate interests, curricula, enrollments and degrees, and prospective job markets. In October, a small advisory committee met to review two survey instruments developed by the Academy to bring consistency and structure to the future data

collection efforts of the national service organizations in the humanities.

As part of the Humanities Indicators project, the Academy has also commissioned in-depth studies to review existing research and the limitations of current databases in three areas: the career paths of undergraduate humanities majors, curricular and departmental changes in the liberal arts, and changing patterns of financial support for the humanities within universities.

Mapping the Humanities, a second project in the Initiative, is developing research studies on the evolution of humanities disciplines and the broad social and intellectual changes that affected these fields in the twentieth century. The first volume, to be edited by Patricia Meyer Spacks, will consider how seven core disciplines – American literature, comparative literature, history, African American studies, philosophy, art history, and law – have responded to the pressures of specialization and the fragmentation of knowledge. At a workshop in June 2003, essayists considered how the study of their respective disciplines would help to clarify both the causes and consequences of transformation in the humanities.

In early November Academy Fellow David Hollinger (UC Berkeley) convened an authors’ conference for the second volume in the series, *The Humanities and the Dynamics of Inclusion: 1945 – 2000*. This study, to which sixteen humanities scholars are contributing essays, examines the role played by the humanities in incorporating diverse cultural and ethnic groups, as well as new ideas, disciplines, and subject matter, into American universities. Topics to be considered include the entry of women, Jews, African Americans, and Catholics into college and university faculties; the relationship between demographic and curricular change; and European intellectual influences on humanities disciplines in America.

Other projects and lectures are also being developed as part of the Initiative. In an effort to improve public understanding of the humanities, the Academy is constructing an online Humanities Resource Center, which will appear as a separate section on the Academy’s website. Users will be able to easily access information about the Humanities and Culture Initiative, about current databases in the humanities, and about other organizations working in the humanities. The online resource will also serve as a clearinghouse for information about fellowships and other funding opportunities and will provide a bibliography of work on the development of the humanities disciplines.

In addition to Patricia Meyer Spacks and Francis Oakley, the Executive Committee of the Humanities and Culture Initiative includes Denis Donoghue (NYU), Steven Marcus (Columbia University), and Leslie C. Berlowitz (American Academy). Malcolm Richardson (American Academy) directs the Initiative. ■



Two participants at the November authors’ conference: Rolena Adorno (Yale University) and David Engerman (Brandeis University)



Patricia Meyer Spacks



David Hollinger



Denis Donoghue



Francis Oakley



Leslie C. Berlowitz



Malcolm Richardson

Examining the History of Education

As of early 2000, 113 million children of primary school age remained out of school, according to the UNESCO Institute for Statistics. Meanwhile, “the total number of young people aged 6 to 17 in the less-developed regions is expected to grow by more than 100 million in the next quarter century,” observes Joel E. Cohen (Rockefeller and Columbia Universities), co-chair of the Academy’s Universal Basic and Secondary Education (UBASE) project. “The challenge of educating all the world’s children will not get smaller soon.”

On September 6–7, 2003, the Academy’s UBASE project convened a group of historians, economists, sociologists, anthropologists, educational policymakers, and public health experts from

around the world to discuss the history of educational expansion and its significance for ongoing efforts to achieve universal education.

In the past, the project of nation-building and economic development provided the political energy for expanding education systems. But today the political and economic rationales of the past are proving inadequate for mobilizing the political will necessary to reach universal enrollment, observed Academy Fellow Kenneth Prewitt (Columbia University). This is especially true in countries where only a minority of children still lack access to schools. Several participants noted a shift in the discourse among education advocates. Past arguments linking education to economic development have given way to those empha-



Aaron Benavot and Julia Resnick

sizing social justice and, more recently, national security.

At the workshop, Aaron Benavot and Julia Resnick (both of the Hebrew University of Jerusalem) presented a paper examining the origins of compulsory education and the means by which the relatively standard model of education emerged and spread globally. Benavot and Resnick also considered the role of international and nongovernmental organizations in promoting the spread of education. The group discussed the relevance of historical experience to solving contemporary problems such as restricted access to school caused by poverty, gender, race, ethnicity, and rural locale.

The UBASE project, co-chaired by Cohen and David E. Bloom (Harvard School of Public Health), is investigating the rationale, feasibility, and consequences of provid-

ing every child in the world with an education of high quality. The study will produce a series of Occasional Papers and other communications on topics ranging from the cost of achieving universal education to the use of new technologies for educational expansion. A forthcoming paper, “Assessment: Measuring Progress Toward Universal Education,” by Henry Braun (Educational Testing Service) and Anil Kanjee (Human Sciences Research Council, South Africa), examines the way in which standardized evaluative tools affect contemporary efforts at educational expansion. The first Occasional Paper published by the project, “The Consequences of Global Educational Expansion: Social Science Perspectives,” appeared in April 2003 and can be downloaded from the Academy’s website at www.amacad.org/publications/occasional.htm. ■



Co-chair of the UBASE project Joel E. Cohen (Rockefeller and Columbia Universities) with Javier Corrales (Amherst College)

Selected Grants and Gifts

In the fiscal year that ended March 31, 2003, the Academy continued to receive important support for its projects and other activities from foundation grants and restricted gifts from individuals. Selected recent grants and gifts to program areas (for the 2002–2003 and 2003–2004 fiscal years) include:

Science and Global Security

Carnegie Corporation of New York – \$168,740, second installment of a three-year \$497,000 grant for “Governance of the Military and Commercial Uses of Space.”

Carnegie Corporation of New York – \$135,606, final year of a three-year

\$548,500 grant to support “International Security in the Post-Soviet Space.”

National Science Foundation – \$118,318 to support the International Institute for Applied Systems Analysis.

Humanities and Culture

The William and Flora Hewlett Foundation – \$155,000, second installment of a four-year \$750,000 grant to support the development of humanities indicators.

The Rockefeller Foundation – \$125,000, second installment of a two-year \$250,000 grant to support the development of humanities indicators.

Visiting Scholars Program

41 University Affiliates – \$600,000 to support the program.

The Annenberg Foundation – \$250,000 to support the program.

The Virginia Wellington Cabot Foundation – \$200,000 installment of a four-year \$500,000 grant in support of the program and community outreach.

The Charles and Suzanne Haar Fund at The Jerusalem Foundation, Inc. – \$25,000 to establish the Esther Haar Scholar Exchange Program within the Visiting Scholars Program.

Other

Elizabeth and Stephen Bechtel, Jr. Foundation – \$250,000 for renovation and improvements to the first floor of the House of the Academy.

Restricted Individual Gifts – \$149,423.

University of California, Irvine – \$50,000 for the Western Center.

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