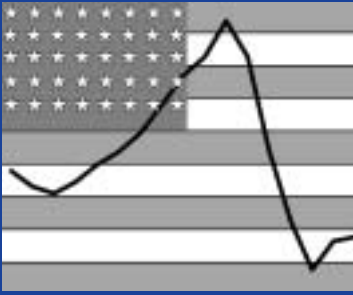


# Bulletin

PROCEEDINGS OF THE AMERICAN ACADEMY OF ARTS & SCIENCES

WINTER 2004

VOL. LVII, NO. 2



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## The Economic Outlook and Current Policy Issues

*Robert E. Rubin*



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## Joyce, Leavis, and the Revolution of the Word

*Denis Donoghue*



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## The Independence of the Federal Judiciary

*Judith Resnik, Danny J. Boggs, and Howard Berman*

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# AMERICAN ACADEMY OF ARTS & SCIENCES

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# Calendar of Events



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AMERICAN ACADEMY  
OF ARTS & SCIENCES

**Monday,  
January 26, 2004**

Symposium – Cambridge

*“Have You No Sense of Decency?” McCarthyism  
50 Years Later*

**Speakers:** Nathan Glazer, Harvard University;  
Anthony Lewis, *New York Times*; and  
Sam Tanenhaus, *Vanity Fair*

**Location:** House of the Academy

**Wednesday,  
February 11, 2004**

1878th Stated Meeting – Cambridge

*“What’s the Point of Democracy?”*

**Speaker:** Amartya Sen, Harvard University

**Location:** House of the Academy

**Friday,  
February 27, 2004**

Panel Discussion – Berkeley

*“The Court and Congress”*

**Speakers:** Philip Frickey, UC Berkeley, and  
Gordon Silverstein, UC Berkeley

Comments by Neal Devins, College of William  
and Mary, and Nelson Polsby, UC Berkeley

**Location:** University of California, Berkeley

This event is part of the conference on “Earl  
Warren and the Warren Court: A Fifty-Year  
Retrospect,” co-sponsored by the Earl Warren  
Legal Institute and the American Academy.

**Wednesday,  
March 10, 2004**

1879th Stated Meeting – Cambridge

*“Voting with Dollars”*

**Speakers:** Bruce Ackerman, Yale Law School;  
Barney Frank, U.S. House of Representatives;  
and Nick Littlefield, Foley, Hoag & Eliot LLP

**Location:** House of the Academy

**Tuesday,  
March 16, 2004**

Understated Meeting – UC Irvine

*“Reliable Information in a Democracy: A Case Study”*

**Speaker:** Patrick Morgan, UC Irvine

**Location:** UC Irvine

**Tuesday,  
March 30, 2004**

Understated Meeting – Madison

*“A Roundtable Discussion on Research and the  
Wisconsin Idea”*

**Location:** University of Wisconsin, Madison

**Time:** 5:30 p.m.

**Wednesday,  
April 14, 2004**

1880th Stated Meeting and Joint Meeting  
with the Boston Athenaeum – Cambridge

*“Einstein’s Clocks, Poincaré’s Maps: Empires of  
Time”*

**Speaker:** Peter L. Galison, Harvard University

**Location:** House of the Academy

**Time:** 6:00 p.m.

**Monday,  
May 3, 2004**

Understated Meeting – Cambridge

*“Contemplating Torture and Lesser Forms of  
Highly Coercive Interrogation”*

**Speakers:** Sanford Levinson, University of  
Texas at Austin School of Law, and Philip  
Heymann, Harvard Law School

**Location:** House of the Academy

**Time:** 5:00 p.m.

**Wednesday,  
May 12, 2004**

1881st Stated Meeting and 224th Annual  
Meeting – Cambridge

*“Bugs, Behavior, and Biomolecules: The  
Naturalist’s Guide to the Future”*

**Speakers:** May Barenbaum, University  
of Illinois at Urbana-Champaign; Thomas  
Eisner, Cornell University; John G. Hilde-  
brand, University of Arizona; and Jerrold  
Meinwald, Cornell University

**Location:** House of the Academy

**Time:** 5:30 p.m.

*For information and reservations, contact  
Sheri Landry (phone: 617-576-5032; email:  
slandry@amacad.org).*

# Academy News

## NEH Grant to Support Visiting Scholars

The Academy's efforts to support younger scholars through its Visiting Scholars Program (VSP) have received a major boost from a National Endowment for the Humanities Challenge Grant. The NEH award, which must be matched on a 3:1 basis, will help the Academy raise \$2.4 million in funding for Visiting Scholars in the humanities and related activities. Gifts to the Academy for the VSP can be used for the match.

Now in its second year, the VSP is providing much-needed career development and research opportunities for promising postdoctoral scholars and junior faculty. Humanities scholars in the early stages of their careers face enormous challenges in establishing themselves professionally. The academic job market now generates only one full-time, tenure-track position for every two new Ph.D.s in the humanities; postdoctoral fellowships outside the sciences are in short supply; and junior faculty are under pressure both to publish original research and to shoulder full-time teaching loads.

The VSP provides younger scholars working in the humanities, social sciences, and science policy a chance not only to pursue research full time for a year but also to interact with Fellows in Academy programs and activities. These fellowships provide an important opportunity to assist younger scholars in advancing on the path to a tenured position. "The Academy is offering postdoc opportunities of the most desirable kind," says David Laurence, who as director of English programs for the Modern Language Association is responsible for the MLA's studies of job placement for Ph.D.s in English.



The postdocs who have spent a year in residence at the Academy have responded enthusiastically to the program. As Joseph Entin, a postdoctoral scholar at the VSP last year, remarked: "The Academy offers one of the most exciting opportunities available for emerging scholars to develop as thinkers and writers. The opportunities to interact with Fellows and to present our work at research seminars provided wonderful occasions for intellectual discussion and critique, helping me to see my own work in a larger context." Entin is now an Assistant Professor of English at Brooklyn College.

Visiting Scholar Crystal Feimster, on leave this year from her post as Assistant Professor of History at Boston College, describes the benefits of the Academy's program for a scholar in a tenure-track job. Feimster says that securing outside support was the only way that she could have taken a full year's sabbatical at more than half-pay to work on her book manuscript

*Continued on page 39*

## Winter Events in Cambridge

Music and light were the motifs of two winter events recently held at the House of the Academy: a Stated Meeting and holiday concert in early December and a New Year celebration in January to view a lighting sculpture on the Academy's grounds.

On December 3, Academy Fellow Lewis Lockwood (Harvard University) addressed the Academy's 1877th Stated Meeting on the topic "Beethoven and His Royal Disciple." Over 250 people filled the Academy's auditorium to hear Lockwood speak about the relationship between Beethoven and his royal patron the Archduke Rudolph (1788–1831), to whom the composer dedicated over a dozen works. Lockwood's talk, which will be reprinted in the Spring 2004 issue of the *Bulletin*, included an analysis of the "Archduke" Trio, Opus 97, with musical illustrations by the Boston Trio. The evening concluded with the ensemble's performance of the Archduke Trio in its entirety.

At a reception on the evening of January 15, Academy Fellows and guests gathered to view John Powell's lighting installation in



Lighting installation in Norton's Woods

Norton's Woods. Powell spoke about the sculpture, which uses sodium- and mercury-vapor light sources to create paths of light across the Academy's grounds, and about the application of the scientific principles of color vision in his work. He told the group that had gathered indoors to view the exhibition on a subzero evening that he was attracted to the Academy's site because he likes "the interface between urban and rural" that the House, the woods, and the surrounding neighborhood represent. ■



Allison Eldridge, Lewis Lockwood, Irina Murisanu, and Heng-Jin Park



## Challenges Posed by Newly Elected Members

On October 11, 2003, the American Academy of Arts and Sciences welcomed its 223rd class of members at an Induction Ceremony in Cambridge, Massachusetts. Mathematician and computer scientist **Frank Thomson Leighton**, chemist **Carolyn R. Bertozzi**, lawyer and philanthropist **William H. Gates, Sr.**, and literary scholar and critic **Michael Wood** addressed the audience, which also featured a performance by world-renowned operatic baritone **Sherrill Milnes**. Their remarks appear below, in the order presented.



### Frank Thomson Leighton

As a mathematician and computer scientist, I have been privileged to be a participant in one of the most important and exciting technological and sociological advances of our generation. I am speaking, of course, of the Internet.

As a graduate student at MIT twenty-something years ago, I remember thinking it was really cool to be able to type my thesis using a publication-quality word processor and then to be able to send it to colleagues across the country using something called e-mail. Back then, the network through which e-mail traveled was known as the DARPA Net, and it had been created to facilitate research collaborations among government, industry, and universities. Back then, only a few thousand people had access to this exciting new technology. Very few, if any, had any idea of its true potential or how it was destined to evolve.

Today hundreds of millions of people use the Internet on a regular basis to send e-mail, search for information, pay bills, buy books, get the news, make reservations, download music, run businesses, or just chat with friends. Trillions of dollars of e-commerce are conducted over the Internet annually. The Internet is even used to manage critical national infrastructure in sectors such as transportation,

banking, manufacturing, utilities, and national defense.

The power of the Internet as a communications medium is unprecedented in human history. Never before has it been possible for an individual or an entity to communicate with so many so easily and so quickly. The impact of the Internet on society will surely be a subject for study by future historians and sociologists.

The growth of the Internet infrastructure needed to support the myriad demands of hundreds of millions of users has been explosive. When I was a graduate student, the Internet consisted of a single network in a single country. Today the Internet consists of over fifteen thousand distinct networks that collectively span nearly every country in the world. The wires and fibers in these networks are connected, in a somewhat haphazard fashion, by millions of switches that process trillions of bits of data every second of every day.

In contrast to the growth of the Internet, the underlying algorithms, protocols, and software that make the Internet work have not changed all that much over the past twenty years. It is truly remarkable that the technology developed decades ago to support a single network used by a few thousand people has scaled to support thousands of interlinked networks used by hundreds of millions. It is even more remarkable that the original protocols have proved to be robust enough to support many unanticipated applications, not the least of which are the World Wide Web and peer-to-peer networks for file sharing. Some of the early pioneers of the Internet are members of this Academy, and they have made a tremendous contribution to society.

There are problems with the infrastructure, however, and these problems are now threatening to become critical. Several of the problems derive from the fact that the original Internet protocols were based on a foundation of trust. It was assumed that people would use the Internet for the purposes for which it was intended and that they would do nothing to harm the infrastructure or other users, either intentionally or by accident. There was a strong sense of community in which an individual user would not take actions to the detriment of the common good, even if such actions would directly benefit that individual.

While such noble assumptions were fairly safe in the collegial environment of the DARPA Net of twenty years ago, they have led to many of the vulnerabilities inherent in the Internet of today. Some of these vulnerabilities are well known. For example, who among us hasn't

*As the Internet assumes a more critical role in our national infrastructure, it becomes even more important that we address the vulnerabilities that have come along with the benefits.*

been inundated with spam or had our computer infected by a virus or worm? Unfortunately, spam and the few well-publicized worm-based attacks on the Internet infrastructure represent just the tip of the proverbial iceberg.

For example, it is well known that the famed Slammer worm that attacked the Internet earlier this year caused billions of dollars of damage and incapacitated several important networks. Slammer infected hundreds of thousands of computer servers within a few minutes of its release into the Internet. It is less well known that, despite all its damage, Slammer was a relatively benign worm in that it had no "payload." Slammer's only function was to replicate itself, and it was the mechanics of the replication that caused the damage. Had Slammer been specifically designed to cause damage, the outcome could have been far worse. And Slammer exploited just one of the thousands of vulnerabilities that are discovered in Internet-based software each year.

Other worms and viruses are more malevolent. In addition to using the infected computer as a host for self-replication, they also cause the computer to perform an Internet-based attack of some kind. For example, the Code Red virus was designed to attack the White House's Web infrastructure. The recent Blaster worm was designed to attack Microsoft's Web infrastructure. In other cases, the virus or worm acts as a Trojan horse, leaving the infected computer in a vulnerable state that can be exploited later in a manner, and at a time, chosen by the attacker.

The perpetrators of Slammer, Code Red, the original Blaster, and most every other virus and worm have not been caught. That is because the Internet protocols make it very easy to mask one's identity by stealing that of another. For example, before releasing an onslaught of unwanted e-mails into the Internet, a spammer will often hijack someone else's Internet identity and use that identity as the home base from which to send the spam. When investigators try to detect the source of the spam, they are led to an innocent bystander.

On the Internet, almost anyone can impersonate almost anyone else. Impersonation was never really contemplated when the DARPA-Net was designed, so no defenses were incorporated to prevent it. The implications go well beyond spam. For example, there are many ways for a thief to steal credit card numbers, personal passwords, and many other sensitive data that are commonly transmitted over the Internet. If a thief wants to learn the password to your online bank account, the thief simply directs your computer or your Internet service provider to send him or her all Web traffic destined for your bank. He can do this because it is relatively easy to trick a computer or the Internet into sending traffic to an unintended destination. When your browser contacts the thief instead of your bank, the thief responds by showing you the regular bank web pages that ultimately invite you to sign in with your password. You oblige, and the thief can now access your bank account without fear of detection. I don't know the precise figures on the amount of damage caused by e-crime annually, but it is a large and rapidly growing problem.

As the Internet assumes a more critical role in our national infrastructure, it becomes even more important that we address the vulnerabilities that have come along with the benefits. Today we worry about spam, viruses, and e-crime. Soon we will need to worry about the possibility that a government or a terrorist will use the Internet to attack critical infrastructure, with far more serious effects than an overflowing mailbox or a loss of money or confidentiality.

The challenge we face is to continue to reap the many benefits of a wonderful and remarkable technology while at the same time mitigating the impact of its misuse. This is, of course, not the first time that a technological advance has had the potential to be used for good as well as bad. In the case of the Internet, however, the challenge cuts across almost every sector of society. Governments must decide how use of the Internet will be regulated, if at all, and how liability for misuse will be assigned. Academics must discover novel ways to make the Internet more secure at the same rate as they discover novel ways to make the Internet do more cool things. Industry must work harder to identify and eliminate vulnerabilities before they are exploited. And each of the hundreds of millions of Internet users must themselves take greater care to prevent their computers from being compromised and used for destructive purposes.

I can't help but think, given the diverse and extraordinary collection of talent represented

here today, that the Academy itself might provide an ideal forum within which we can discuss and confront this important challenge. With everything that has already happened with the Internet, it is sometimes hard to remember that this is just the beginning. Many exciting discoveries lie ahead. If the experiences of the past few years are any indication of things to come, it will surely be an interesting journey.



## Carolyn R. Bertozzi

As a chemist who studies biological systems, I represent a rapidly growing group of interdisciplinary researchers who seek to understand biology at the level of atoms and molecules. We call ourselves chemical biologists.

I am also a movie buff. One of my all-time favorites is *The Fantastic Voyage*, a classic from the 1960s in which a group of scientists and their spacecraft were miniaturized for a journey through the human body – an “inner space” no less cosmic or mystical than the galaxies and nebulae of outer space. These lucky scientists directly witnessed the organs and tissues that sustain us; they literally navigated vital processes, such as breathing and digestion, that we take for granted every day. What would those scientists have seen if they could have been shrunk further, to the size of a single molecule traveling along the surface of a living cell?

Jonathan Swift is quoted as saying “Vision is the art of seeing things invisible.” In the past decade or so, technologies derived from physics, engineering, and chemistry have revolutionized the biological sciences by bringing the invisible to light. During my own career, I have witnessed a dramatic convergence of the

## *We have the tools to visualize chemical changes in the brain during the formation of a memory, the moment of first contact between a virus and its victim, the moment of conception.*

physical and biological sciences. Biology is now considered a frontier to be explored with technologies originating from quite different fields, including condensed matter physics, aerospace engineering, and even the semiconductor industry.

Two recent Nobel Prizes underscore the impact of physical techniques in the biological sciences: one in physics, for the superconducting magnets that made possible magnetic resonance imaging, and another in chemistry, for the X-ray crystallographic study of ion channels, the proteins that transduce electrical signals in the body. Other technologies have now made it possible to visualize single cells within a complex tissue, and even single molecules within living cells. Suddenly, we have the tools to visualize chemical changes in the brain during the formation of a memory, the moment of first contact between a virus and its victim, the moment of conception. What we have learned has revised our scientific thinking in radical ways, and has also reminded us that we are still only scratching at the surfaces of biological phenomena.

The ability to study single molecules in action has produced some particularly startling results. In the past, molecules could be studied only as a population; thus, it was unknown whether individual molecules within an ensemble could possess different properties despite their chemical identity. We now know that a population presents only an idealized, most probable version of reality. Single molecules can exist in different states from those of their neighbors and adopt improbable contortions that are essential for their functions. Proteins can be seen “breathing,” DNA “relaxing.” It turns out that individual molecules can have moods as different as those of individual human beings while retaining their molecular similarity.

My own work focuses on understanding the landscape of cell surfaces, which have turned out to be as variable as the terrain of our plan-

et. Cells communicate with each other by virtue of molecules displayed on their surfaces. Changes in those molecules can signify changes in the cell’s physiology, including the transformation to disease states such as cancer. We develop chemical technologies for probing the types of molecules a cell displays and for relandscape those cells whose surface molecules are antisocial and will promote disease. Some interesting avenues for diagnosis and treatment of cancer have come from this work.

Just as the cells in our body communicate via cell surface molecules, microbial pathogens such as bacteria and viruses can interpret our cell surface code and exploit those molecules to infect us. An example is *Mycobacterium tuberculosis*, the bacterium that causes TB and kills more people each year than any other single infectious agent. This bacterium attaches to sugar molecules found on the surfaces of lung cells, an event that initiates infection. By understanding the chemical details of those sugars, we are hoping to craft new approaches for treatment and prevention.

As the physical and chemical sciences lead us deeper into the details of biology, we must not lose sight of the larger world around us. In such a tumultuous time, it is an overwhelming privilege to be engaged in scientific discovery and in academic pursuits in general. However, we should not forget that academic settings permit the flexibility to pursue scientific problems of global significance. Many of these endeavors, such as anti-TB drug development, are not commercially viable in private industry. In choosing systems for basic research, global considerations should be part of the equation.

But fundamental scientific discovery – asking why and how – is not frivolous. Indeed, these questions represent the natural drive to make sense of our world. James Watson is quoted as saying, “We used to think our future was in the stars. Now we know it is in our genes.” As my colleague Dr. Kate Carroll has noted, many of the qualities that make us human, such as hope, faith, determination, and love, remain genetically unmappable and chemically undefined. Understanding the basis of humanity is an eternal challenge that crosses the disciplines of the arts and sciences. We should work hard to foster the spirit of exploration and discovery among young scholars and remind them that the mundane world visible to us now is just one face of a more complex, more elegant universe that we still have no means to sense. We should show them the frontier and then follow their vision.



**William H. Gates, Sr.**

I need to open with a qualifying note. While I am an officer of the Bill and Melinda Gates Foundation, my remarks here and elsewhere on the subject of estate taxation are made for myself and are in no way an expression by or for the foundation.

As you are likely aware, I have spoken out for the retention of the federal estate tax. I suppose some would wonder whether the repeal or retention of a tax that is currently only a modest part of total federal revenues merits discussion among the profound subjects that concern the membership of this organization. I suggest that the issues test some fundamental national axioms and merit the thoughtful interest of serious citizens.

I will speak to three elements of the argument: fiscal impact, the rectitude of a tax on assets passing to heirs, and progressivity.

Recently, the estate tax has contributed some \$30 billion, which amounts to about 1 percent of federal revenues. However, there is general agreement among folks involved in making financial forecasts that this tax will become a major element of federal revenue.

The growth of the wealth of our wealthiest citizens has been prodigious in recent years. It appears that if one assumes a modest economic growth rate of 2 percent between 1998 and 2052, some \$40.6 trillion will pass by inheritance; an assumption of a 4 percent growth rate will mean an aggregated inheritance of over \$130 trillion. These figures lead to an estimate, even allowing for increased exemption amounts, of annual average federal estate tax collections of \$157 billion using the lower growth rate and of \$752 billion using the higher rate.

One cannot help but wonder at the thinking that argues to forfeit this huge revenue stream at a time when the nation is accepting an an-

nual federal deficit in excess of \$400 billion. The word reckless comes to my mind.

At the same time, one cannot help wondering from where and from whom this revenue will come if this tax is repealed.

A central criticism of the estate tax is the view of many that anyone who works hard and saves should be able to leave the results of his labor to his family. As one irate caller to a talk show shouted, “What right has the government to steal the money a man has worked hard to earn and save and which he wants to leave to his family?”

Is there propriety in applying the taxing power to a transfer from parent to child? My response is simple: more harm than good arises from large inheritances.

## *Can there be a serious question about the rectitude of our society's recovering from its most successful citizens a significant fraction of the fortune they leave at the time of their death?*

Do we not see that so very often, the reliance on a large inheritance is a disadvantage to an heir, who is deprived of any motivation to make a constructive contribution?

“Wait!” cry the repealers. “This tax destroys parents’ motivation to work hard for the benefit of their kids.”

To which those of us who want to keep this tax say, “Not true.” We have had this tax for nearly one hundred years, and there is no evidence whatsoever that it has diminished the urge of our ambitious fellow citizens to create wealth.

Looking closer at this issue, few would argue for eliminating all family inheritance. Even those of us who like the tax acknowledge that at bottom, this debate turns on the question of how much should go to taxes and how much to kids.

Any examination of a policy that turns on quantity requires getting some numbers on the table. One can argue endlessly about what size estate should be exempt and what the rate of tax should be. I suggest that it is sensible to look at where the present legislation is taking us. In 2009 the exempt amount will have gone

up to \$3.5 million per person – \$7 million per couple – and the rate of tax will have come down to 45 percent. This is a reasonable set of numbers by which to look at the result in dollars. Here is how that formula would apply in a family:

Estate	Amount of Tax	Rate of Tax	To Heirs
\$7M	0	0%	7M
\$10M	\$1.35M	13.5%	\$8.65M
\$20M	\$5.85M	29%	\$14.15M
\$50M	\$19.35M	39%	\$30.65M
\$100M	\$41.85M	42%	\$58.15M

Are these remainder figures not enough? One response is that they are too much. Some critics of inherited wealth point out that there are two fundamental goals for an organized society in respect to economic affairs: (1) creating and protecting a system in which individuals can prosper and (2) making opportunity equal for all. They go on to point out what a great job we in this country have done in respect to goal number one but how dramatically we have failed at goal number two.

Moving on from the family inheritance issue, we need to look at the fairness of a tax that applies to so few of our people – only 2 percent of all those who die in any year, under the present rules. As exemptions increase, it seems clear that the percent paying the tax will get smaller. This is certainly the most progressive tax anywhere. Can it be justified?

Focus on the folks at the \$100 million level and up – people whose executors are going to have to write really big checks. We need to analyze just how you explain such a phenomenal accumulation of money.

No doubt the search for cause would disclose intelligence and hard work. But a deeper look would also disclose another fundamental factor: being born in the United States – what Warren Buffett refers to as winning the game of ovarian roulette.

What is so special about place of birth? First off, economists agree that the presence of a stable market for goods and assets adds 30 percent to the value of everything. We have that.

Who is the biggest venture capitalist in the history of the universe? No, he does not have an address on Sand Hill Road. He is a fellow widely known as Uncle Sam, and he spends some

\$96 billion every year on fundamental research in universities and laboratories all over this country. And what comes of this research? Well, for starters, how about things like integrated circuits, silicon microprocessors, the human genome analysis, the Internet – research results that are readily available to our smart entrepreneur.

Experts calculate that this basic research generates a 66 percent return. As Lester Thurow says, “Put simply, the payoff from social investment in basic research is as clear as anything is ever going to be in economics.” Another multiplier: economists tell us that 50 percent of the annual growth in our economy is a function of the introduction of new technology.

So, again, how do people manage to get so rich in this country? It is because the laws protect and the markets maximize value, and our science and technology keep producing new products and ways to get things done. The existence of a working and stable market, and a government continuously and gratuitously injecting new and useful science – topped off with a work force of ingenious graduates from educations subsidized by our government – has produced an economy that is uniquely innovative and robust.

The beneficiaries are not just the technology entrepreneurs – oh, no. The effects accrue to the building contractor, to the owner of a string of grocery stores, to the Wall Street broker – to all who seek wealth.

Again, why is our hundred-million-dollar millionaire so rich? Item number one: he is an American. Warren Buffett says it, as usual, so very well:

I personally think that society is responsible for a very significant percentage of what I've earned. If you stick me down in the middle of Bangladesh or Peru or someplace, you'll find out how much this talent is going to produce in the wrong kind of soil. I will be struggling thirty years later. I work in a market system that happens to reward what I do very well – disproportionately well.

Can there be a serious question about the rectitude of our society's recovering from its most successful citizens a significant fraction of the fortune they leave at the time of their death? This society has made it possible for these men and women and their families to have an elegant life: first-class education, comfort, virtually unlimited options about where to go and what to do, public acclaim. Society has a just claim, and it goes by the name estate tax.





## Michael Wood

There is a young man in Martin Scorsese's film *Goodfellas* who says, "As far back as I can remember, I always wanted to be a gangster." As far back as I can remember, I always wondered just what it is that literature does, even if most of the time I merely surrendered myself to the enjoyment of whatever it was that it was doing. My few words here today are an attempt to say something about what literature does and why we need it now more than ever. We always need it now more than ever, whenever now is.

A little more than four hundred years ago, in England, Philip Sidney wrote "An Apology for Poetry" to defend literature against its enemies. He called it poetry, but he meant pretty much what we now mean by literature: imitations of life, with imaginary people doing real things, real people doing imaginary things, and, more rarely, imaginary people doing imaginary things. Poetry, Sidney argued, is more philosophical than history and more historical than philosophy. It is neither too concrete and particular nor too abstract and general, but just right, like a certain famous bowl of porridge, although that was not Sidney's comparison.

Sidney was being playful, so we should not take his aspersions on philosophy and history too literally. He was completely serious, however, in his belief in the value of poetry, and he was anxious to distinguish it from what he called "tougher knowledges." This is one phrase among many that make his old text seem so close to us. We too have our tougher knowledges and our more tender knowledges, although the words we most frequently use are hard and soft. Here is the question I want to propose for your consideration, and to answer partially: How soft is soft knowledge? Is soft knowledge really knowledge at all? Maybe if it's soft it isn't knowledge.

A colleague of mine, looking hard at a great modern painting – a vast abstract canvas by Barnett Newman – thought our usual critical demands were the wrong ones. What does this painting mean, what does it represent, what is it trying to say? These questions, he felt, were getting us nowhere. The question he wanted to ask was, What does this painting know?

This question has two immediate and very interesting implications: first, that a painting might know something that the painter didn't, and second, that the painting probably knows a lot that it is not going to tell us. Now, it seems as if literature – plays, poems, novels, essays – must tell us what it knows because, after all, it can talk, as painting can't. But I think exactly the same question can be addressed to a work of literature, and to good effect. Words speak, but words have their silences too, in ordinary life as in literature.

It's possible that the forms of the sonnet and the villanelle know something – about love, loss, repetition, design, language, memory, longing – that the individual writers of sonnets and villanelles may not know, or that the forms know these things differently. It's certain that F. Scott Fitzgerald's later short stories knew more about the divided contents of his mind than Fitzgerald did. There is much to say on this score, but today I'd like to concentrate on the other implication of the question. What does this work – play, poem, novel, essay – know that it is not telling us?

Of course the knowledge, told and not told, is going to be different in each individual case, and there is a sense in which we can't generalize about it. But we can generalize about the notion of the not-told – the residue of knowledge that we sense to be in a work but that is not made explicit. This tightens the screw of our question, because we are now asking not only if soft knowledge is real knowledge but also what silent knowledge means to us. If one opposite of soft is hard, the other is loud.

Literature – that is, both literary works and the study of literature – is often thought to specialize in doubt; even the dogmatic Bertolt Brecht thought of himself as a "teacher of doubt." Why do we think this? Because literature is all about imagining alternatives, other lives, other places – "the always possible other case," as Henry James put it. And doubt is important to literature, no doubt about it – but only because it is important to all forms of learning and understanding. Without doubt there is no knowledge. More specifically, there is no sustained knowledge without sustained doubt. So it can't be that literature really does more doubting

*Every story has a story it is not telling, and if we listen, we can hear it in the silence. Not only can we guess what it means; we can also know what it knows.*

than any other discipline or does nothing but doubt. That would not be soft or tender knowledge; it wouldn't be knowledge at all.

No, the point of imagining other people and other circumstances is not to dismiss or lose from sight the present people and circumstances, and it is not to scramble the boundaries between fact and fiction – although critics and scholars have been known to do those things. The point is to know what is the case and what could be the case, and to know both of these instances intimately: the first because we don't have a choice, and the second because we are willing to imagine it and keep on doing so – well, more than imagine it. Literature is the practice of living with what could be the case – really living with it because it occupies your mind and your heart; it takes up your energies and sympathies.

Is this knowledge? It is not secure knowledge, because part of the discipline of living with what could be the case is the steady consciousness that there could always be another case – another other case. But I do want to suggest that this very consciousness is a discipline or can be, and it is not an easy slipping from one option to the next. Every story has a story it is not telling, and if we listen, we can hear it in the silence. Not only can we guess what it means; we can also know what it knows. We can hear the kindness in the anger, the generosity in the rage, the certainty in the doubt, and the hope in the very articulations of despair.

This is not all that literature knows, but it knows and teaches this well. The great critic William Empson, moving easily from literature to ordinary life, once wrote of "a generous scepticism which can believe at once that people are and are not guilty" as "a very normal and essential method." "This sort of contradiction," he said, "is at once understood in literature. People, often, cannot have done both of two things, but they must have been in some way prepared to have done either; whichever they did, they will have still lingering in their minds the way they would have preserved their self-respect if they had acted differently; they

are only to be understood by bearing both possibilities in mind.” Transposing this thought to my theme, I would say that we need to hear, both for ourselves and for others, the story that is being told and the story that is not being told, because we shan’t understand anything if we don’t.



## Sherrill Milnes

*Sherrill Milnes preceded his remarks with a performance of “Surely the Presence of the Lord Is in This Place” by Lanny Wolfe, and Aaron Copland’s arrangement of the old American song “At the River.”*

Singing does send a certain message – especially those two beautiful pieces – but I do have a little story, if you will permit me to both sing and speak. I have a relationship, in a strange way, to the Academy; you will see what I mean at the end of the story.

My maternal third great-grandfather, Matthew Lyon, was born in Wicklow, Ireland, in 1747. When he was thirteen, he stowed away on a ship bound for somewhere in this area of the United States, not necessarily Boston. He was discovered before the end of the trip, and the captain sold him as an indentured servant for three years in Litchfield, Connecticut.

Time passed. He found his way to the Green Mountain Boys and served with Ethan Allen all through our Revolutionary War. He was in the battle when we took Fort Ticonderoga back from the British. In 1797 he was elected to Congress as the sole representative from Vermont and served until 1801. He never lost his Irish mouth; he was a rabble-rouser.

I recently finished the book *John Adams* by David McCullough, which is a wonderful tome – very thick, but fascinating reading. As far as I knew, nothing in the book had any relationship to me – I was simply enjoying it and learning more about our country. All of a sudden, I found myself reading that my third great-grandfather, Matthew Lyon – on the floor of the hall in Philadelphia where Congress was holding its meetings – spit in somebody’s face

for criticizing his politics. Lyon was an anti-Federalist. There were two parties then, the Federalists and the anti-Federalist Jeffersonian Republicans.

At any rate, there was a newly passed sedition act at the time, which was duly repealed some years later – and Matthew Lyon was the first person to be indicted under that law. As McCullough notes, “He spent four months in a foul Vermont jail.” His friends paid a thousand-dollar fine, which was heavy back then. Somehow, he emerged out of jail as more of a national hero and was immediately reelected to Congress. And perhaps to get even – not with John Adams personally, but with John Adams as the head of a party or the head of the country – Matthew Lyon cast one of the deciding votes that put Thomas Jefferson in office; poor John Adams served only one term. As you will recall, it was the only time in American history when the vice president ran against the president, because they were not of the same party.

I am not sure how Matthew Lyon would feel about me being inducted into this Academy founded by John Adams, among others – but this third great-grandson is extremely thrilled and extremely honored. ■

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## Academy Membership Profile

### Current membership:

3,808 Fellows from 46 states

560 Foreign Honorary Members from 36 countries

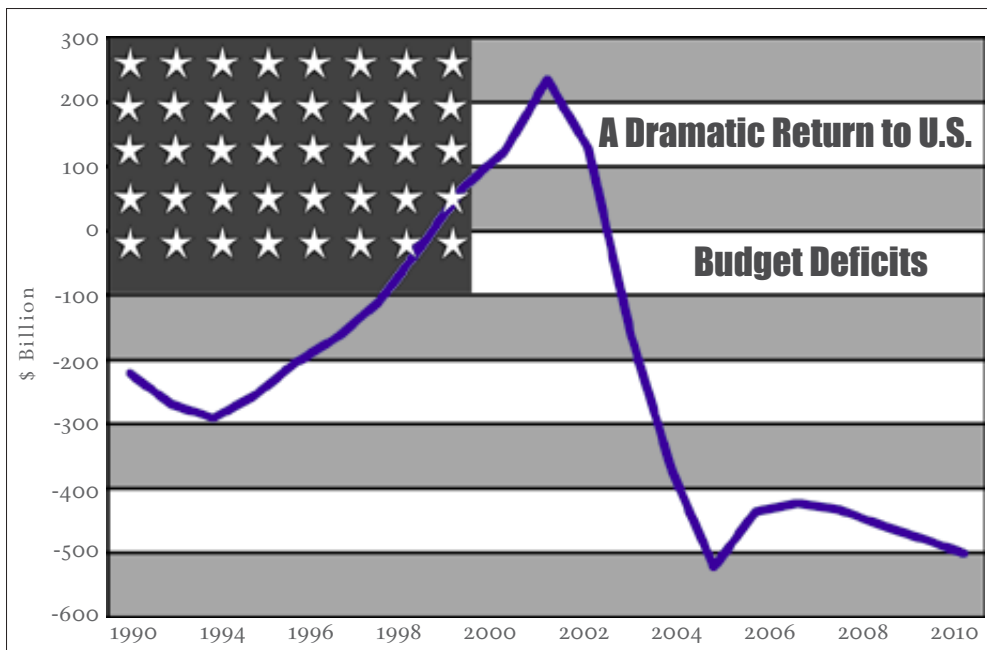
The membership is drawn from 172 colleges and universities, 143 educational and research institutions, 74 cultural and artistic organizations, 171 businesses and corporations, 34 foundations and charitable organizations, and 14 government agencies.

### Class of 2003:

181 Fellows from 22 states

29 Foreign Honorary Members from 9 countries

The new class is drawn from 146 colleges and universities, 17 educational and research institutions, 16 businesses and corporations, 3 foundations and charitable organizations, and 3 government agencies.



# The Economic Outlook and Current Policy Issues

Robert E. Rubin

Introduction by Louis W. Cabot

This presentation was given at the 1875th Stated Meeting, held in New York on November 3, 2003.

Robert E. Rubin, a Fellow of the American Academy since 2001, is Chairman of the Executive Committee at Citigroup, Inc.

Louis W. Cabot is Vice President of the Academy and Chairman of Cabot-Wellington, LLC. He has been a Fellow of the Academy since 1958.

## Louis W. Cabot

From the beginning of Robert Rubin's career at Goldman Sachs through his years of public service in the Clinton administration to his current position as chairman of the executive committee at Citigroup, Bob has been a major figure at the center of the American financial system. He once said that "public service is an essential calling for the well-being of America" and he carried out that responsibility with consummate skill and integrity. In Washington, Bob guided the newly created National Economic Council as it oversaw and coordinated economic policy making at the domestic and international level. As the seventieth secretary of the treasury, he worked with both parties to achieve landmark legislation balancing the federal budget. He was an aggressive advocate

for opening domestic and foreign markets to trade and for maintaining America's commitment to multilateral financial institutions. Now, as chairman of the Local Initiative Support Corporation, he continues his long-standing efforts to foster business investments in depressed urban and rural areas.

When Bob resigned his position as secretary of the treasury, President Clinton said: "He built a spirit and a belief that we could actually make this economy what it ought to be for our people. That will be his endearing achievement – along with the fact that everybody believed that as long as he was secretary of the treasury nothing bad could happen." I am proud to introduce Mr. Secretary, Robert Rubin.

## Robert E. Rubin

I was asked to comment this evening on the U.S. economy and on some of the policy issues that we face. But I would like to start on a slightly different tack, which will quickly lead back into – and in my view usefully frame – this discussion.

During my sophomore year in college, I took a philosophy course from an elderly Greek professor who started each class by turning over a wastebasket on top of the desk in front of the room and then he used that wastebasket as a podium for his notes. To me that gesture symbolized the simplicity – in the best sense of the word – of this insightful man's thinking. The underlying theme that I took from his year-long course, as he deconstructed philosopher after philosopher, was that there is no provable certainty. When I mentioned this to my father, he told me that he too had enrolled in a philosophy course at Columbia many years before, and that at the opening lecture his professor had also made the point that nothing could be proven with certainty. At the end of the class, my father went up to the front of the room, banged on the hardwood table, concluded that the table existed, and dropped the course. I had a very different reaction. In the skeptical Harvard environment of that day, Professor Demos's course crystallized a train of thinking about certainty that has stayed with me ever since and has enormously important ramifications.

If you accept the view that there is no provable certainty – and that is the view of modern science – then you are quickly led to the conclusion that reality is complex and uncertain and that decisions are about probabilities and trade-offs.

I believe that only with that mind-set can a policymaker – or for that matter someone running a business or investing – thoughtfully come to grips with the immense uncertainties and complexities of the economic environment. In an effort to capture that mind-set and to explore policy issues that I think will be central to our nation's economic well-being in the years ahead, I started working on a book about three years ago. The book, titled *In an Uncertain World: Tough Choices from Wall Street to Washington*, describes my experiences from Washington and Wall Street as well as discusses policy issues – but also investment and business issues – that in my judgment are central to our future.

As you can tell from the book's title, I believe that we are in one of those times when the economic outlook, which is always uncertain, is especially uncertain. There are powerful, competing forces that will determine the economic conditions in the years ahead, and what happens will be enormously affected by the policy choices we make in the face of these competing forces. Moreover, as the book describes, many of the policy issues we face are not only substantively difficult but also politically difficult. Unfortunately, at least in my view, the

## *I believe that we are in one of those times when the economic outlook, which is always uncertain, is especially uncertain.*

American people have too little understanding of most of these issues, and that makes the politics of moving forward very tough and obfuscation relatively easy. Our country would benefit enormously from a more economically literate electorate.

To illustrate this very serious problem and its effects, I remember once being in the Oval Office with President Clinton and he said to me that one of his greatest regrets of his time in office was that he was never able – despite his tremendous skills – to get the American people to better understand the benefits of trade, with the result that trade, which has dislocations that are keenly felt but benefits that are more diffuse and less well understood, has remained a very difficult political issue. I also remember, and I describe this in the book too, that Diane Feinstein told me that in her 1994 Senate campaign 42 percent of the people in a California poll thought their income taxes had been increased by the 1993 deficit reduction program. In fact, that program increased income taxes for only the top 1.2 percent of taxpayers, but the distortion of the program by opponents had been so effective that a near majority in that California poll believed that their income taxes had been increased.

Let me now turn to a brief discussion of the economic outlook and the policy issues before us.

The 1990s were a remarkable period economically – the longest expansion in U.S. economic history, with high growth, low inflation, greatly increased productivity, over 20 million new jobs in the private sector, and rising incomes across the spectrum. Many factors contributed but I don't think there is any question that policy was central and indispensable, especially a dramatic change in fiscal policy but also a continuation of trade liberalization and much else. However, as seems inevitable with extended good times, imbalances also developed during that period, including high levels of corporate and consumer debt, large current account deficits, a stock market that went to excess by conventional standards, and the development of substantial excess capacity. Those imbalances created the virtual inevitability of a difficult period, though the difficulties were lessened

by strengths carried forward from the 1990s, including a low unemployment rate, high productivity growth, and a sound fiscal position now thoroughly dissipated. Moreover, at least in my view, once the difficult conditions began the policy decisions in response to those conditions – leaving aside the Fed – were far from optimal with respect to minimizing the duration and severity of the difficult period and with respect to positioning the country for the long term. Most fundamentally we could have accomplished whatever fiscal stimulative purposes we wanted with temporary stimulative measures, not tax cuts that had large costs and great deficit effects in later years, and the tax cuts would have been more efficient if they had been focused predominantly on low- and middle-income people who have the highest propensity to spend. A greater jobs' impact might also have been possible through more aid to state and local government for current spending in schools, homeland security, information, and the like.

Looking forward, most Wall Street economists feel that growth will be healthy through the second quarter of next year, due to accommodative monetary policy and massive stimulus from defense, homeland security spending, and tax cuts – however badly those tax cuts were designed for that purpose. This forecast seems to me likely to be correct, albeit not certain. And it is not clear whether this growth will be accompanied by strong job growth, which is important economically and politically. In any case, assuming that this short-term forecast does turn out to be correct, the big question is, once a strong stimulus has worked its way through the system by mid next year, does the recovery continue and become a sustainable expansion or do we go back to a more sluggish economy?

I think the answer could readily go either way. What I would like to do now is to look at some of the risks that are relevant to that question – risks that even if we do enter a more sustained period of growth could continue to overhang the economy and pose an overall significant risk for the longer term.

I focus on these risks not necessarily because I have a judgment as to their likelihood, although I do think they are serious, but because they are either ignored or underweighted in almost all forecasts by economists, investors, and the like – perhaps because they are not quantifiable and therefore don't fit neatly into models – and because they pose policy challenges that are absolutely critical to our economic future.

To start, the imbalances that I mentioned before for the most part have continued and some have even worsened. Consumer debt is at roughly record levels as a percentage of the economy, and despite lower debt service due to interest rates, it seems to me likely at some point to constrain consumption. Excess capacity in the United States is still substantial, though the effect of that on investment could be balanced against the deterioration in the capital stock from three years of low investment. Very significantly, the current account deficit is at very high levels. That may not matter for some time, but at some point, if not corrected, our currency is likely either to gradually decline – which could be readily absorbed as an orderly adjustment – or to have a sharp

## *Enormous and never ending deficits greatly reduce our flexibility in responding to future emergencies – geopolitical or economic.*

decline, which could hurt our economy through higher interest rates and possibly a lower stock market. The long-term fiscal mess now in place adds to this risk of a sharp decline because it too can undermine foreign confidence in our currency – especially in conjunction with our large current account deficit. It increases the vulnerability to a diminution of foreign confidence because we have a large fiscal deficit to fund, and, while the explanation is complicated, the fiscal mess contributes to the size of the current account deficit.

Geopolitical conditions are obviously another very serious problem: Iraq, North Korea, the Middle East conflict, nuclear proliferation, terrorism – all of this is very relevant to our economy. In our administration, we had to deal first with the Mexican financial crisis and then the so-called Asian financial crisis. There is no question that strong American leadership was needed in order to deal with these matters but we very quickly learned that we also had to work cooperatively with the rest of the world if we were going to succeed. I believe that the same is true with respect to today's geopolitical challenges: leadership and true cooperative endeavor together are the keys to most effectively achieving our purposes.

There is also a backlash against trade liberalization both in the United States and around the world. When I was at treasury, I testified before

## *While our economic potential is strong, realizing that potential will depend heavily on the policy choices we make.*

the House Ways and Means Committee that not only exports but imports were good, because of lower inflation and lower interest rates, traditional comparative advantage theory, and competitive pressure on domestic industry to be productive. A conservative on the committee said that I was the first public official that he could remember testifying to the benefit of imports. Unfortunately, as I mentioned a moment ago, the dislocations created by trade are highly visible, and the benefits are diffuse and not well recognized by the American people. That makes trade a very difficult issue politically, and I think trade will be a major focus in the 2004 election with both parties playing to this issue. Moreover, the politics are now made more difficult because the range of goods and services subject to the pressures of trade has expanded enormously. It is not only traditional manufacturing but software development, processing, call centers, and now even legal research and investment banking research that are being outsourced due to the new technologies that create real-time connection across the globe and to the hundreds of millions of people now well educated in China and India available to work at pay levels way below those in the United States.

There is also the substantive question of whether these new developments in any way change the traditional case for trade liberalization. I have spent a fair bit of time discussing this with people I view as deeply thoughtful on these matters, and they certainly believe the answer to that question is no – and that seems to me highly likely to be right. However, since the dislocations have become much broader, greater, and quicker, some believe there may be a time gap for adjustment – which corresponds to the more worried view some business people have – and a gap could have significant economic and political consequences. In any case, these developments place an even higher premium on equipping our people to be productive and competitive in the global economy through a strong public education system, through effective retraining and placement assistance to address dislocations in our inner cities, and through fiscal discipline to provide low interest rates conducive to a robust invest-

ment environment. And protectionism would only make matters worse. Consumers, interest rates, and inflation would suffer, competitive nations would be able to receive inputs to their production processes more cheaply than we could, and our trading partners would likely retaliate. More flexible exchange rates in China and Japan might help, but I suspect that that likely effect is overestimated. What would help a lot would be more robust economies in Europe and Japan. Unfortunately, neither area is likely to have anything more than modest growth, even after expected improvement next year, and neither area seems likely to me in the near future to do enough to address the structural issues that have led to sluggish economies.

There are a number of other significant risks and issues that I could discuss, but I would like to wind up this discussion of risks with U.S. fiscal policy, our politically caused Achilles' heel. In January 2001, the bipartisan Congressional Budget Office projected a ten-year surplus of \$5.6 trillion. Goldman Sachs & Co. a few weeks ago projected a ten-year deficit of \$5.5 trillion. That is a deterioration of about \$11 trillion, or allowing for adjustments for comparability, about \$9 trillion – and that is the number to keep in mind. The 2001 and 2003 tax cuts, assuming, as their opponents argued, that those tax cuts scheduled to expire will instead be made permanent, account directly for roughly one-third of the \$9 trillion deterioration and over 50 percent of the \$5.5 trillion deficit itself, and indirectly for far more because those tax cuts act to undermine the fragile political consensus that existed around fiscal discipline.

On January 7, 1993, during the transition, the new economic team met with President Clinton to discuss strategy to restore sustained growth. Shortly into the meeting President Clinton said, "I got it – the deficit is a threshold issue," and he opted for the politically difficult path of restoring fiscal discipline to promote recovery through lower interest rates.

Supply-side critics, like Newt Gingrich and Dick Arme, said that tax increases involved in our 1993 deficit reduction program would lead to recession. Instead we had the remarkable economic conditions that I described a few moments ago. That was due in part to favorable interest rate effects and in part to something we had not fully anticipated. In the minds of many people, the deficits had become a symbol of a much broader inability to manage our economic affairs, and so had damaged consumer and business confidence. Restoring fiscal discipline not only promoted lower interest

rates but it also promoted consumer and business confidence, as well as confidence in international capital markets. All of this is described in my book as part of what we call "the great fiscal debate," which has long raged in different forms and will be front and center for years to come.

Understanding the morass of the early 1990s, and then the sustained recovery, provides useful guidance in projecting the consequences of today's fiscal position – never ending and substantial long-term deficits that will get worse with the passage of each year because of the rapidly increasing retirement of the baby-boomer generation around the end of this decade. In the book, I go into a quantitative analysis of the interest rate effects that these deficits are likely to have, but suffice to say for this discussion that those effects are serious. And they could be far more severe if the markets come to believe that the government may give up on fiscal discipline and attempt to deal with its debt problem through inflation, and even more if they undermine foreign confidence in our currency. In addition, as I mentioned a few moments ago, our long-term fiscal morass can have substantial adverse impacts on the more general level of confidence of consumers and business.

Finally, these enormous and never ending deficits greatly reduce our flexibility in responding to future emergencies – geopolitical or economic. For example, our ability to respond to the tragic attack of 9/11 with a massive defense and homeland security effort without creating a sharp upward spike in interest rates was possible because of the large fiscal surplus that we then enjoyed. Also, the capacity of the federal government to perform the functions that the American people desire of government will be greatly reduced by our future fiscal conditions.

All of this is an enormous threat to our future economic well-being. When these effects may occur, however, is not predictable. As long as private demand for capital is relatively low – as has been the case for the last three years – interest rates will be low and the markets will be relatively unlikely to look forward to long-term fiscal conditions. But once private demand for capital becomes robust, that demand will collide with the government's need to fund its fiscal deficits, the markets will look forward to the fiscal morass, and at some point the severe threats to our economy from our fiscal mess are highly likely to become a reality.

To conclude, I focused this evening primarily on risks because I believe that while our economic potential is strong, given the many ad-

vantages we have in the economic arena, realizing that potential will depend heavily on the policy choices we make. Unsound choices can lead to real difficulty, and I think we are on the wrong track on many important fronts. The first requisite for making good policy choices is to recognize the complexities and uncertainties inherent in the issues we face. A group as distinguished as the American Academy of Arts and Sciences and dedicated to thought can help promulgate that realization, as well as better public understanding of the issues themselves, as I hope my book will do on a very modest scale. Though my focus has been on policy, it seems to me that investors and business people also need to be fully cognizant of these risks and need to try to find the right bal-

ance between being aggressive to realize the benefits, if conditions turn out to be favorable, and careful in order to weather difficult times should they occur. Our country has a history of resilience in overcoming difficulties and mistakes, and on the theory that past is prelude, that, as well as our natural advantages, could bode well for a good future, but it is going to take a lot of work by all of us to get there. ■

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1. Robert E. Rubin (Citigroup, Inc.)
2. William T. Golden (New York, New York) and Andreas Acrivos (City College of the City University of New York)
3. Harriet Zuckerman (Andrew W. Mellon Foundation), John Noble Wilford (*New York Times*), and Executive Officer Leslie C. Berlowitz
4. Jerome Bruner (NYU School of Law), David Alan Hamburg (Cornell University), Fritz Stern (Columbia University), and Helene Kaplan (Skadden, Arps, Slate, Meagher & Flom)



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# The S. T. Lee Lecture in the Humanities Joyce, Leavis, and the Revolution of the Word

Denis Donoghue

Introduction by Patricia Meyer Spacks

This presentation, the inaugural S. T. Lee Lecture in the Humanities, was given at the 1869th Stated Meeting and 223rd Annual Meeting, held at the House of the Academy on May 14, 2003.

*Denis Donoghue, a Fellow of the American Academy since 1983, is University Professor and Henry James Chair of English and American Letters at New York University.*

*Patricia Meyer Spacks is President of the Academy and Edgar F. Shannon Professor of English at the University of Virginia. She has been a Fellow of the American Academy since 1994.*

## Patricia Meyer Spacks

Denis Donoghue is a dear friend and a dedicated member of this Academy. He is also one of the foremost literary critics currently writing in the English language. Denis is a University Professor at New York University, where

he holds the Henry James Chair of English and American Letters. He has written over twenty books, including *Words Alone: The Poet T. S. Eliot, Adam's Curse, Reflections on Religion and Literature*, and *The Practice of Reading*, for which he received the Robert Penn Warren/Cleanth Brooks Award for Distinguished Scholarship. His most recent book, *Speaking of Beauty*, has just been issued by Yale University Press and was previewed in the Fall 2002 issue of *Daedalus*.

No mere list of books suffices to suggest the range or the depth of Denis Donoghue's accomplishment. He appears to have read everything, to know everything, and to have something to say about everything. What's more, he says it with unflinching wit, elegance, and precision. As you probably know already, Denis is Irish, which gives him an unfair advantage: everything he says sounds wonderful. But ev-

erything he says, generally, is wonderful. He's always worth listening to. He has assumed some unpopular positions in recent critical wars, but he defends his positions with such grace and intelligence that it's almost impossible to disagree with him.

As I mentioned earlier, Denis is one of the Academy's most active members. He has been a Fellow since 1983 and serves as the Academy's representative on the board of the National Humanities Center. He is also the chair of the Nominating Committee and cochair of the Academy's Initiative on Humanities and Culture.

Next month Queen's University, Belfast, will hold an international symposium in his honor. Tonight we are honored and delighted to have Denis Donoghue with us to present the first S. T. Lee Lecture in the Humanities.

## Denis Donoghue

I would like to raise two related questions about literary criticism. First, does it make sense to invoke, as a critical consideration, the “spirit” of a language – the English language, for instance, or the American language, or Spanish, French, or any other? If it does, is this spirit to be construed essentially or historically – that is, does it float free of its conditions, or is it found only among those conditions? Second, is it pertinent for a critic to maintain, literary evaluation being in question, that a particular work of literature does or does not acknowledge the spirit of the language in which it is written? Does this matter? I’ll refer to two occasions on which a critic apparently assumed that there is indeed a spirit of the English language; that it has certain qualities, socially and historically acquired; and that the work in question is defective for having transgressed that spirit.

In September 1933 F. R. Leavis published in *Scrutiny* a review of several items from Joyce’s workshop and its vicinity: *Anna Livia Plurabelle*, fourteen issues of the journal *transition* (published by Eugene and Maria Jolas), *Haveth Childrens Everywhere*, *Two Tales of Shem and Shaun*, Eugene Jolas’s *Language of Night*, and *Our Exagmination Round His Factification for Incamination of Work in Progress*, ascribed to “Samuel Beckett and Others.” Leavis admired *Ulysses* – or at least parts of it, notably the “Proteus” chapter, in which Stephen Dedalus walks along Sandymount Strand – but he had nothing warm to say of *Work in Progress*, and he rejected the arguments in its favor put forward in the *Exagmination*. He was particularly exasperated by Jolas’s contribution to that book – “The Revolution of Language and James Joyce” – and by his claim that “in developing his medium to the fullest, Mr. Joyce is after all doing only what Shakespeare has done in his later plays, such as *The Winter’s Tale* and *Cymbeline*.”<sup>1</sup> To enforce that claim, Jolas quoted three short passages from the first act of *Cymbeline* and three from the fifth. From the first, he quoted a few lines of conversation between “two Gentlemen,” in which one of them says that while the king is distressed by his daughter’s marriage, she has in fact chosen an incomparable man:

FIRST GENTLEMAN:  
I do not think  
So fair an outward and such stuff within  
Endows a man but he.

SECOND GENTLEMAN:  
You speak him far.

FIRST GENTLEMAN:  
I do extend him, sir, within himself,  
Crush him together rather than unfold  
His measure duly.<sup>2</sup>

The verbal murmuring from “fair” to “far” to “extend” is hardly worth the labor. As Frank Kermode says in *Shakespeare’s Language*, “The struggle with the idea that in straining to praise him the Gentleman has managed to diminish rather than to exaggerate Posthumus’s virtues seems to be simply a waste of energy – evidence, perhaps, that there was a nervous excess of energy to be wasted.”<sup>3</sup> It’s not clear whether Kermode means a nervous excess of energy in the Gentleman or in the play at large – an excess that might have wasted itself in any character but happens to start the wasting with the First Gentleman. In his chapter on *Macbeth*, Kermode refers again to “an excess of energy,” this time on Shakespeare’s part, resulting in verse “that sometimes makes so much trouble for itself,” complicating what might well have been simple (207). Jolas didn’t comment on the First Gentleman’s lines, but presumably he quoted them to show that Shakespeare, like Joyce in *Work in Progress*, was willing to exceed the strict requirements of narration and description and to give the language unlimited freedom. In one of the passages that Jolas quoted from the fifth act, Jachimo tells Cymbeline about Posthumus

. . . sitting sadly,  
Hearing us praise our loves of Italy  
For beauty that made barren the swell’d  
boast  
Of him that best could speak, for feature,  
laming  
The shrine of Venus, or straight-pight  
Minerva,  
Postures beyond brief nature, for condition,  
A shop of all the qualities that man  
Loves woman for, besides that hook of  
wiving,  
Fairness which strikes the eye.  
(*Cymbeline*, 5.5.160 – 68)

2 *Cymbeline*, 1.1.22 – 27, in *The Complete Works of Shakespeare*, ed. Hardin Craig and David Bevington (Glenview, IL: Scott, Foresman, 1973), 1182.

3 Frank Kermode, *Shakespeare’s Language* (New York: Farrar, Straus, & Giroux, 2000), 265.

It is high talk, but Shakespeare’s first audiences probably took it in their stride. The style is formulaic, a standard version of hyperbole with a few local encrustations. A common member of the audience was unlikely to ask himself the question an adept of conceits would linger on: precisely how the shrine of Venus could be lamed, or why Minerva is called “straight-pight.” In such passages, according to Jolas, Shakespeare “obviously embarked on new word sensations before reaching that haven

*Does it make sense to invoke, as a critical consideration, the “spirit” of a language – the English language, for instance, or the American language, or Spanish, French, or any other?*

of peacefulness mirrored in the final benediction speech from the latter play [*Cymbeline*]” (“Revolution,” 87). But Jolas didn’t recognize that Shakespeare provided something for everybody and gave the groundlings enough to get the drift of what was going on. Cultivated members of the audience got, in addition, more than enough verbal subtlety to stretch their minds. The king himself is irritated with Jachimo’s speech, but not because he can’t keep up with its intricacies. “I stand on fire,” he says to Jachimo; “Come to the matter” (*Cymbeline*, 5.5.169 – 70). It is hard to see why Jolas invoked this speech to endorse Joyce’s procedures in *Work in Progress*, unless he thought that any instance of the ornate style in Shakespeare would help to make his case. Leavis rejected the comparison:

Mr. Joyce’s liberties with English are essentially unlike Shakespeare’s. Shakespeare’s were not the product of a desire to “develop his medium to the fullest,” but of a pressure of something to be conveyed. One insists, it can hardly be insisted too much, that the study of a Shakespeare play must start with the words; but it was not there that Shakespeare – the great Shakespeare – started: the words matter because they lead down to what they came from. He was in the early wanton period, it is true, an amateur of verbal fancies and ingenuities, but in the mature plays, and especially in the late plays stressed above, it is the burden to be delivered, the precise and urgent command from within, that determines expression – tyrannically.

1 Eugene Jolas, “The Revolution of Language and James Joyce,” in *Our Exagmination Round His Factification for Incamination of Work in Progress* (London: Faber & Faber, 2nd impression, 1961), 86 – 87.



That is Shakespeare's greatness: the complete subjection – subjugation – of the medium to the uncompromising, complex and delicate need that uses it. Those miraculous intricacies of expression could have come only to one whose medium was for him strictly a medium; an object of interest only as something that, under the creative compulsion, identified itself with what insisted on being expressed: the linguistic audacities are derivative.<sup>4</sup>

Joyce's style in *Work in Progress* seemed to Leavis to have taken a wrong turn. The interest in words and their promiscuous relations evidently came first: more and more possibilities of stratification and complication then proposed themselves. The organization that Joyce achieved in *Work in Progress*, according to Leavis, was "external and mechanical." To justify such a procedure, Joyce would have had to have "a commanding theme, animated by some impulsion from the inner life capable of maintaining a high pressure." He had a sufficient theme in *Ulysses* and the earlier books, where "the substance is clearly the author's personal history and the pressure immediately personal urgency." The historical particularity in those books, Leavis said, "is explicit enough and it is hardly impertinent to say that *Ulysses* is clearly a catharsis." But Leavis found no such theme in *Work in Progress*. If one asks, he said, "what controls the interest in technique, the preoccupation with the means of expression, in the *Work in Progress*, the answer is a reference to Vico; that is, to a philosophical theory." ("Joyce," 195 – 196)

Leavis took for granted, in that review as elsewhere, that there is a before-and-after in expression. What comes first in a great writer is a creative compulsion – silent, insistent, irrefutable. The words come later, though in a writer of Shakespearean power not much later. The apparent immediacy of the expression testifies to the force of the "impulsion from the inner life" that achieved its form in those words. Leavis's assumption of the necessary sequence of feelings and words seems reasonable, but it is not decisive. The inner life is not the only source. Writers often discover perceptions in the transactions of one word, image, or figure with another – perceptions prompted by something as fortuitous as an acoustic similarity. Macbeth's "If th' assassination / Could trammel up the consequence, and catch / With his surcease, success" may have come from his inner life, but it is more probable that it came from Shakespeare's feeling for the latencies

## *What comes first in a great writer is a creative compulsion – silent, insistent, irrefutable. The words come later, though in a writer of Shakespearean power not much later.*

of expression in words alike and different: *surcease, success*. These perceptions could be claimed to have come, ultimately, from Macbeth's imagined inner life – but ultimately is a long way down. It is enough that the whole speech is convincing as Macbeth's.

I've said that the words come later, though in a writer of Shakespearean power not much later. The critic and psychologist D. W. Harding maintained that what distinguishes a creative writer from other people is that the writer brings language to bear upon expression at a remarkably early stage in the cognitive process. Ordinary people have feelings and look about for ways of expressing them, searching patiently (or not) among the words at hand, but creative writers bring the medium – the available words, grammars, and syntaxes – to bear upon the expressive need at the earliest possible moment in its demand. In *Experience into Words*, Harding made the case most explicitly in an essay on the poems of Isaac Rosenberg:

Usually when we speak of finding words to express a thought, we seem to mean that we have the thought rather close to formulation and use it to measure the adequacy of any possible phrasing that occurs to us, treating words as servants of the idea. "Clothing a thought in language," whatever it means psychologically, seems a fair metaphorical description of much speaking and writing. Of Rosenberg's work it would be misleading. He – like many poets in some degree, one supposes – brought language to bear on the incipient thought at an earlier stage of its development. Instead of the emerging idea being racked slightly so as to fit a more familiar approximation of itself, and words found for that, Rosenberg let it manipulate words almost from the beginning, often without insisting on the controls of logic and intelligibility.<sup>5</sup>

In another essay, entitled "The Hinterland of Thought," Harding showed that certain passages in Shakespeare – notably the "Pity, like a naked new-born babe" passage in *Macbeth* – reveal "not disorder but a complex ordering of attitude and belief achieved a stage earlier than discursive statement" (182). The difference between Harding's theory and Leavis's is not immense, but it is a difference that issues in Leavis's rejection of *Work in Progress*. Leavis used his theory of creative sequence – the compulsion first, then the words – to make a comprehensive distinction between Shakespeare's methods and Joyce's. Harding's theory would make it more difficult to enforce the distinction, and might make it impossible, the temporal gap between feeling and words being in his version nearly closed. An adequate account of the difference would bring in William Empson's meditations on ambiguity and on various examples of complex feelings expressed by their not being entirely or discursively specified.

At this point in Leavis's review, it becomes clear that he was not merely rejecting Jolas's comparison of the later Joyce with the later Shakespeare; he was making a far larger critical and cultural case. He started with the conditions that made Shakespeare possible:

He represents, of course, the power of the Renaissance. But the power of the Renaissance could never so have manifested itself in English if English had not already been there – a language vigorous enough to respond to the new influx, ferment and literary efflorescence, and, in so doing, not lose, but strengthen its essential character. The dependence of the theatre on both Court and populace ensured that Shakespeare should use his "linguistic genius" – he incarnated the genius of the language – to the utmost. And what this position of advantage represents in particular form is the general advantage he enjoyed in belonging to a genuinely national culture, to a community in which it was possible for the theatre to appeal to the cultivated and the populace at the same time. ("Joyce," 199)

Such a culture, such a community, in Leavis's view, no longer existed. "The strength of English," he claimed, "belongs to the very spirit of the language – the spirit that was formed when the English people who formed it was predominantly rural." When England was a configuration of villages and parishes, the people lived by mutualities of recognition (it was Leavis's theme, and L. C. Knights's) that did not, as a social norm, survive the Industrial Revolution. Dickens is an equivocal figure in this context: *Dombey and Son* finds both good

4 F. R. Leavis, "Joyce and 'The Revolution of the Word,'" *Scrutiny* 2 (2) (September 1933): 194.

5 D. W. Harding, *Experience into Words* (New York: Horizon, 1964), 99.

and ill in the new railways. But “the modern suburban world,” as Leavis called it, testifies to an order that is gone, “and there are no signs of its replacement by another.” He continued, “The possibility of one that should offer a like richness of life, of emotional, mental and bodily life in association, is hardly even imaginable. . . . If the English people had always been what they are now there would have been no Shakespeare’s English and no comparable instrument” (222). Leavis’s conclusion was rueful but not entirely dispirited:

At any rate, we still have Shakespeare’s English: there is indeed reason in setting great store by the “word” – if not in the revolutionary hopes of Mr. Jolas and his friends. With resources of expression that would not have existed if Shakespeare’s England had not been very different from his own, Gerard Manley Hopkins wrote major poetry in the Victorian Age. We have poets in our own day, and James Joyce wrote *Ulysses*. For how long a cultural tradition can be perpetuated in this way one wonders with painful tension. Language, kept alive and rejuvenated by literature, is certainly an essential means of continuity and transition – to what? (201)

Leavis felt that he must at least put the question forward and give the necessary evidence.

The spirit of the English language – the genius of it – is the value to which Leavis appealed in repudiating *Work in Progress*. Shakespeare is supremely its embodiment, and proof that the language available to him was strong enough not only to survive the continental immigrations but also to thrive on them. If Jolas had not offered the challenge of a comparison of Joyce and Shakespeare, I don’t think Leavis would have risen to the occasion in that way. Jolas seemed to be claiming not that Joyce was as great as Shakespeare but that Joyce’s method in *Work in Progress* was comparable to Shakespeare’s in the last plays, and just as valid. Leavis, in reply, insisted that the spirit of the English language necessarily took the form of Shakespeare’s mature plays and could not have been adequately fulfilled by any other manifestation. In a sarcastic sentence, he brushed aside two linguistic ventures that seemed to be seriously on offer in 1933: “The ‘internationalization of language’ acclaimed by Joyce’s apostles is a complementary phenomenon to Basic English; indeed, we note with a surprised and pleased sense of fitness that Mr. C. K. Ogden has shown an active interest in the *Work in Progress*” (198). Each of these inventions, Leavis implied, was mechanical, a mere device, lacking roots in a national culture. Each could be proposed only in default of the necessary community of values and at a time when there

seemed to be a desperate reaching out for stratagems.

In the same number of *Scrutiny* in which the review of Joyce appeared, there also appeared Leavis’s essay on Milton’s verse – an essay that appealed even more explicitly to the spirit or genius of the English language as a decisive critical consideration. Leavis made appropriate acknowledgment to T. S. Eliot and John Middleton Murry, and might well have thanked Ezra Pound; these writers preceded him in the attempted dislodgment of Milton. His own contribution to that end was his insistence that *Paradise Lost* is for the most part characterized by “the routine gesture, the heavy fall, of the verse . . . the foreseen thud that comes so inevitably, and, at last irresistibly.”<sup>6</sup> Leavis quoted a passage from Book III and another from Book VI to enforce his judgment. But he also quoted, for praise and grateful contrast, a passage from Comus’s temptation of the Lady:

Wherefore did nature pour her bounties forth  
With such a full and unwithdrawing hand,  
Covering the earth with odors, fruits, and flocks,  
Thronging the seas with spawn innumerable,  
But all to please and sate the curious taste?  
And set to work millions of spinning worms  
That in their green shops weave the smooth-  
hair’d silk  
To deck her sons; and that no corner might  
Be vacant of her plenty, in her own loins  
She hatched th’ all worshipped ore and precious gems  
To store her children with. If all the world  
Should in a pet of temperance feed on pulse,  
Drink the clear stream, and nothing wear  
but frieze,  
Th’ all-giver would be unthanked, would be unpraised,  
Not half his riches known, and yet despised,  
And we should serve him as a grudging master,  
As a penurious niggard of his wealth,  
And live like nature’s bastards, not her sons,  
Who would be quite surcharged with her own weight,  
And strangled with her waste fertility;  
Th’ earth cumbered, and the winged air  
darked with plumes,  
The herds would over-multitude their lords,  
The sea o’er-fraught would swell, and th’ unsought diamonds  
Would so emblaze the forehead of the deep,  
And so bestud with stars, that they below  
Would grow inured to light, and come at last  
To gaze upon the sun with shameless brows.  
(lines 710 – 736, quoted in  
“Milton’s Verse,” 126 – 127)

6 F. R. Leavis, “Milton’s Verse,” *Scrutiny* 2 (2) (September 1933): 124.

## The spirit of the English language – the genius of it – is the value to which Leavis appealed in repudiating *Work in Progress*.

Leavis regarded that passage as exhibiting “the momentary predominance in Milton of Shakespeare.” The verse, he said, is “richer, subtler and more sensitive than anything in *Paradise Lost*, *Paradise Regained* or *Samson Agonistes*.” More specifically, “the texture of actual sounds, the run of vowels and consonants, with the variety of action and effort, rich in subtle analogical suggestion, demanded in pronouncing them, plays an essential part, though this is not to be analysed in abstraction from the meaning. The total effect is as if words as words withdrew themselves from the focus of our attention and we were directly aware of a tissue of feelings and perceptions.” (127 – 128)

Colin MacCabe has interpreted this passage as indicating Leavis’s “distrust of words which in their materiality prevent the experience of the author (life) shining through.” The passage, he claims, shows in Leavis the opposition between the supposed truth of the voice and the alleged falsity of writing.<sup>7</sup> There are sentences in Leavis’s essay that justify this interpretation. Regarding the passage he quoted from Book VI of *Paradise Lost*, Leavis said, “Milton seems here to be focusing rather upon words than upon perceptions, sensations or things,” exhibiting “a feeling for words rather than a capacity for feeling through words.” Further, “the extreme and consistent remoteness of Milton’s medium from any English that was ever spoken is an immediately relevant consideration. It became, of course, habitual to him; but habituation could not sensitize a medium so cut off from speech – speech that belongs to the emotional and sensory texture of actual living and is in resonance with the nervous system; it could only confirm an impoverishment of sensibility.” (129 – 130)

It is also true, in both the essay on Milton and the review of Joyce, that Leavis appealed to a time in English culture when speech was “a popularly cultivated art,” when people talked “instead of reading or listening to the wireless” (“Joyce,” 200). But MacCabe doesn’t re-

7 Colin MacCabe, *James Joyce and the Revolution of the Word* (London: Palgrave Macmillan, 2nd ed., 2003), 78 – 79.

mark that Leavis's insistence on the creative force of English speech and English idiom was propelled by his conviction that the spirit or genius of the English language was there to be appealed to and that he knew what it was. Leavis did not anticipate Jacques Derrida's invidious contrast between the axioms of speech and of writing. He did not advert to logocentrism, nor did he question the privileging of voice with its aura of personal presence. Milton was culpable, in Leavis's view, because the grand style he developed "renounced the English language, and with that, inevitably, Milton being an Englishman, a great deal else" ("Milton's Verse," 130). Milton latinized, not only by writing in Latin but also by trying to turn English into Latin, cultivating "a callousness to the intrinsic nature of English." Shakespeare supremely incarnated the genius of the English language. So, too, on a different scale, did Donne. Quoting a few lines from Donne's third satire –

. . . On a huge hill,  
Cragged, and steep, Truth stands, and he  
that will  
Reach her, about must, and about must go;  
And what the hill's suddenness resists, win  
so;  
Yet strive so, that before age, death's twilight,  
Thy soul rest, for none can work in that  
night . . .

– Leavis commented, "This is the Shakespearean use of English; one might say that it is the English use – the use, in the essential spirit of the language, of its characteristic resources" (133). He then quoted the lines in Milton's "Lycidas" about the "stormy Hebrides":

For so to interpose a little ease,  
Let our frail thoughts dally with false surmise.  
Ay me! Whilst thee the shores, and sounding Seas  
Wash far away, where ere thy bones are hurld,  
Whether beyond the stormy Hebrides,  
Where thou perhaps under the whelming tide  
Visit'st the bottom of the monstrous  
world . . .

Leavis maintained that while the words in "Lycidas" "are doing so much less work than in Donne, they seem to value themselves more highly – they seem, comparatively, to be occupied with valuing themselves rather than with doing anything" (133).

If we go back to an early quotation from Leavis's essay on Milton's verse, we may be able to connect his observations on Milton and on

*You could also appeal to the spirit of a language by considering what it might have been rather than what it turned out to be.*

Joyce in a way compatible with Colin MacCabe's interpretation, but without recourse to a Derridean emphasis. You will recall that Leavis, praising the passage from *Comus*, said, "The total effect is as if words as words withdrew themselves from the focus of our attention and we were directly aware of a tissue of feelings and perceptions" (128). I would interpret that sentence as saying more generally that words as words, in any work of literature, should withdraw themselves – or should at least seem to do so – and disappear among the feelings and perceptions they have produced. That is the proper destiny of words – to die into the further human life they have created. It may be wise not to call this further life "presence," lest that word enforce a stronger ontological claim than we need.

Leavis's assumptions appear to entail such a sequence as this one. Since the invention of movable type, we start with graphic signs, words on a page. (Manuscript is another question.) The reader construes these as signs of someone's speech and takes for granted voice, articulation, and audibility. Inevitably, each event of the speech is displaced by the next, while a tissue of feelings and perceptions is forming in the reader's or the listener's mind; and so on until the end of the speech, when every word has disappeared into silence. The best analogies for this process are performances of music and dance. At the end, nothing remains but the silence in which the experience of the work has been, one hopes, resolved. The work can be recovered now only by having the performance repeated or a new interpretation disclosed. Partial recovery is possible by an act of one's memory. I do not need to read again Yeats's "The Folly of Being Comforted" to recall "The fire that stirs about her, when she stirs, / Burns but more clearly," or Eliot's "La Figlia che Piange" to recall "Sometimes these cogitations still amaze / The troubled midnight and the noon's repose." In that sense, not all of the words have disappeared into silence. And in every act of reading or listening there are differences of response. Sir Philip Sidney allows for these differences when he has Philisides, in the third book of *The Countess of Pembroke's Arcadia*, sing one of his songs, "As I my Little

Flock on Ister Bancke." When the twenty-three stanzas are over, Sidney tells us that "According to the Nature of dyvers Eares, dyvers Judgmentes streight followed, some praising his voice, others the wordes, Fitt, to frame a Pastorall style, others the straungenes of the Tale, and scanning what hee should meane by yt." And one listener, old Geron, accuses Philisides of bad taste in telling a tale of "hee knewe not what Beastes at suche a Banquett when rather some Songe of Love or matter for Joyfull melody was to bee broughte forth."<sup>8</sup>

That sequence, or something like it, is implied by the kind of writing and reading that Leavis approved. It follows that the scandal of Milton and Joyce, in Leavis's view, is that in their later work they resorted to uses of words that would not withdraw. Milton's words would not disappear – as speech does and should – into the silence that surrounds them. That is what his latinizing allegedly comes to. Joyce's words in *Work in Progress* and, later, in *Finnegans Wake* are devised in such forms that they cannot withdraw from the context they enforce. There is nowhere for them to go. They have to remain on the page in the graphic state of what Leavis called "words as words." No wonder so many of them defeat the attention of the elocutionist and can be read only in the sense of being looked at.

Even in passages that reward reading aloud, we are often left wondering what the pleasure of doing so has entailed, as in this little passage from Jaun's sermon to a group of girls: "I've a hopesome's choice if I chouse of all the sinkts in the colander. From the common for ignitious Purpalume to the proper of Francisco Utramare, last of scorchers, thirde of snows, in terrorgammons howdydos."<sup>9</sup> It is possible to make sense of this, as Fritz Senn has done, by arranging a loose assemblage of names in the vicinities of St. Ignatius Loyola and St. Francis Xavier.<sup>10</sup> But even if "in terrorgammons howdydos" may be derived from a moment in the Litany of the Saints – *te rogamus, audi nos* – the main attribute of Joyce's locution is its refusal to withdraw either into the litany or into the

8 Sir Philip Sidney, *The Countess of Pembroke's Arcadia*, ed. Albert Feuillerat (Cambridge: Cambridge University Press, 1926), 242. My attention was drawn to this passage by Lorna Hutson, "An Earlier Perspective," *Times Literary Supplement*, 30 May 2003, 4.

9 James Joyce, *Finnegans Wake* (New York: Viking, 1939), 432 – 433.

10 Fritz Senn, *Joyce's Dislocations: Essays on Reading as Translation*, ed. John Paul Riquelme (Baltimore: Johns Hopkins University Press, 1984), 90 – 94.

feelings and perceptions that the litany expresses. “The sinkts in the colander” may be deduced from “the saints in the calendar,” but it is hard to be assured that the deduction constitutes a new perception.

It may be thought that Leavis’s appeal to the spirit of the language is eccentric, but he was not alone in making it. George Eliot, in an essay on the natural history of German life, glanced at the project of constructing a universal language:

Suppose, then, that the effort which has been again and again made to construct a universal language on a rational basis has at length succeeded, and that you have a language which has no uncertainty, no whims of idiom, no cumbrous forms, no fitful shimmer of many-hued significance, no hoary archaisms “familiar with forgotten years” – a patent deodorized and non-resonant language, which effects the purpose of communication as perfectly as algebraic signs.<sup>11</sup>

This supposed language would be fine for science, George Eliot conceded, but not otherwise for life, “which is a great deal more than science.” There is no substitute for historical language:

With the anomalies and inconveniences of historical language, you will have parted with its music and its passion, with its vital qualities as an expression of individual character, with its subtle capabilities of wit, with everything that gives it power over the imagination. . . . The sensory and motor nerves that run in the same sheath are scarcely bound together by a more necessary and delicate union than that which binds men’s affections, imagination, wit, and humour with the subtle ramifications of historical language. (225)

You could also appeal to the spirit of a language by considering what it might have been rather than what it turned out to be. Gerard Manley Hopkins was in this sense a linguistic and cultural nationalist, sympathetic to the aims diversely represented by William Barnes, George P. Marsh, F. J. Furnivall, E. A. Freeman, and R. C. Trench – grammarians and linguists who thought that English had taken a wrong turn at the Renaissance and had thwarted its genius by welcoming indiscriminate continental usages (cf. Austin Warren, *Rage for Order: Essays in Criticism* [University of Chicago Press, 1948], 61–63). The founding of the Early English

11 George Eliot, “Natural History of German Life: Riehl,” in *The Writings of George Eliot: Essays and Leaves from a Note-Book* (Boston: Houghton Mifflin, 1909), 225.

Text Society in 1864 activated the question of English, its rise and perhaps its fall. Hopkins imagined a better English having issued from Anglo-Saxon, a modern language that would not have been amenable, as Shakespeare’s English was, to influxes from Latin, Italian, and French. He sympathized with Barnes (whose *Outline of English Speech-Craft* was published in 1878) and thought his project admirable except for the certainty that it must fail. As he wrote to Robert Bridges on November 26, 1882:

Talking of chronologically impossible and long words the Rev. Wm. Barnes, good soul, of Dorset-dialect poems (in which there is more true poetry than in Burns; I do not say of course vigour or passion or humour or a lot of things, but the soul of poetry, which I believe few Scotchmen have got) has published a “Speech craft of English Speech” = English Grammar, written in an unknown tongue, a sort of modern Anglosaxon, beyond all that Furnival in his wildest Forewords ever dreamed. He did not see the utter hopelessness of the thing. It makes one weep to think what English might have been; for in spite of all that Shakspeare and Milton have done with the compound I cannot doubt that no beauty in a language can make up for want of purity. In fact I am learning Anglosaxon and it is a vastly superior thing to what we have now. But the madness of an almost unknown man trying to do what the three estates of the realm together could never accomplish! He calls degrees of comparison pitches of suchness: we *ought* to call them so, but alas!<sup>12</sup>

In much the same tones, Ezra Pound imagined what a better thing the English language would be if Shakespeare and the Elizabethan poets had opened their ears to Cavalcanti rather than to Petrarch.

The spirit of the language was not only an English consideration. In 1899 Remy de Gourmont published *Esthétique de la langue française*, a tribute to the spirit of the French language and a plea that it should be kept up. There continue to be such appeals. In *Required Writing* and the *New Oxford Book of Modern Verse*, Philip Larkin celebrated Hardy as incomparably the greatest twentieth-century poet in English – a tribute that could only have arisen from his sense of the genius of the language as Hardy-esque and his conviction that the modernism of Pound and Eliot was alien to that genius and therefore an aberration.

Hugh Kenner also proposed a distinction between the spirit of the English language and

12 *The Letters of Gerard Manley Hopkins to Robert Bridges*, ed. Claude Colleer Abbott (London: Oxford University Press, 1935), 162–163.

the spirit of the American language. In his essay “Words in the Dark,” he maintained that the English language received its definitive form and tone from its service to the Elizabethan theater – an institution in which words were required to direct one’s imagination away from the penury of the stage and its appearances. “There are potentialities in Chaucer,” Kenner said, “that have never been developed

## *The spirit of the language was not only an English consideration.*

since, chiefly because the English drama had no use for them, and brought modern English to a working maturity without them.” The incantation of Marlowe’s writing for the stage encouraged the audience not to examine what they could see but to “dream away from the visible.” They were to imagine Helen of Troy, not by looking at the painted boy who crossed the stage, but by letting their minds inhabit for the duration of the words the evening air and “the beauty of a thousand stars.” The sonorosity of Donne’s “A bracelet of bright hair about the bone” has the theater in its ears, even though the line of verse was not written to be performed in that space. But the spirit of the American language has no theater to escape from, no words to transcend the dark; it received its character from eighteenth-century necessities of pamphlet and sermon. It was expected to acknowledge visible things and to help in administering them. Franklin, not Shakespeare, dominated its modes. There was no place for “majestic imprecision and incantation.” Kenner offered this distinction between the spirit of English and the spirit of American in the hope of recommending to English readers the poetry of Ezra Pound, H. D. (Hilda Doolittle), William Carlos Williams, Marianne Moore, and Louis Zukofsky – poets exempt from the Shakespearean echo and therefore free to make their words accompany the trajectory of things seen. They were also free to practice not just imagism but translation as well – to isolate “the poetic effects that are not local and parochial, concocted out of the accidental sounds and colours of the language in which they are conceived.”<sup>13</sup> English readers with Shakespeare in their ears should

13 Hugh Kenner, “Words in the Dark,” in E. V. Rieu, ed., *Essays by Divers Hands: Being the Transactions of the Royal Society of Literature*, new series, vol. 29 (London: Oxford University Press, 1958), 122.

not expect to find in modern American objectivist poetry the incantations and reverberations of “words in the dark.” Kenner’s further implication was that American writers who did not attend to the spirit of the American language – Wallace Stevens, notably, and William Faulkner – did not know what they were doing and lost themselves in pastiches and mimics.

## *I find no theoretical fault in Leavis’s attempt to support his critical values by appeal to the spirit or genius of the English language...*

These are instances of critics positing a spirit of a language and claiming that writers should act in an observant relation to it. Leavis implied that Joyce veered from such observance, perhaps because in Dublin, Paris, Trieste, and Zurich he did not have an adequate national culture or a community to belong to. Presumably, he should have committed himself, as Joseph Conrad, Henry James, and T. S. Eliot did, to the particles of an English national culture that still remained, and made the best of them (though Leavis eventually came to believe that Eliot remained an American of divided creative loyalties and made his commitment to the spirit of English only notionally and in questionable faith). Conrad and James made the most of their opportunities and found a place for themselves in the great tradition of English fiction, along with Jane Austen, George Eliot, and D. H. Lawrence.

Can one still appeal to the spirit or genius of a language as a critical value bearing on this new work or that? Linguists would not give much credence to the notion; they would regard Leavis’s appeal to the spirit of the English language as a rhetorical gesture, the spirit being merely a trope standing for art and culture. They would also regard as foolish the effort to cultivate words of one quality or origin rather than another. Some linguists of an older time thought that particular languages might be characterized. Otto Jespersen fancied that English and German are “masculine” and French and Italian “feminine.” This seems a mystification. It is probably more reasonable to ascribe genius or spirit to writers and to think of a language as a medium and nothing more. But I am not entirely convinced. Social scientists and cultural historians talk boldly about millen-

nia, centuries, generations, and decades – the twenties, the sixties – as if those times could be delineated. They seem to feel no misgiving in attributing to such periods a zeitgeist to which various adjectives may be appended. Personification is as rampant in these activities as in Pope’s *Dunciad*. As soon as you argue, say, that English has certain qualities and that French has other qualities – an argument that Conrad was not alone in making – you can hardly avoid making further distinctions, as if the languages distinguished were persons. Differences between historical or national English and the dialect of Dorset (William Barnes’s medium in many poems) can’t be ignored, nor can they be described in strictly empirical or statistical terms. Spirit and genius, as terms of invocation, don’t float higher above the rough ground than other words regularly used: *nation, race, culture, Renaissance, Europe*.

I find no theoretical fault in Leavis’s attempt to support his critical values by appeal to the spirit or genius of the English language, if I bear in mind that the device is rhetorical – designed to persuade – rather than probative. The attempt becomes more controversial when Leavis argues that the spirit of English is incarnated in Shakespeare and Donne rather than in Spenser and Milton; that it finds its life in the Elizabethan theater or in language that is familiar with the theater, rather than in epic poetry and pamphleteering; that it is at one with speech and the idioms of actual life rather than with graphic forms dependent on print and publication; and that it has not survived the lapse of a national culture.

Leavis’s rhetoric was persuasive in the years between the two world wars, when Eliot too presented English literature as predicated on Shakespeare, Donne, George Herbert, and the Jacobean dramatists. I think Leavis was also justified in correlating the power of English as an expressive and inventive medium with the centuries in which English life was predominantly rural. But that time is gone. If by a distinctive modern literature we mean the trajectory from Baudelaire to Eliot, that was an affair of cities, and the provocative emotion was the friction of urban life. Modern art did not arise from Dorchester or Mansfield Park but from London, Paris, New York, Dublin, Trieste, Prague, and Vienna. Eliot appealed – in what linguists might regard as another mystification – to a larger cultural entity than the genius of English: “[The poet] must be aware that the mind of Europe – the mind of his own country – a mind which he learns in time to be much more important than his own private mind – is a mind which changes, and that this

change is a development which abandons nothing *en route*, which does not superannuate either Shakespeare, or Homer, or the rock drawing of the Magdalenian draughtsmen.”<sup>14</sup>

Pound’s understanding of tradition was predicated on a still larger set of recognitions: selected acts in the cultures of Italy, China, Greece, and America. But neither Eliot nor Pound had any aspiration toward the “internationalization of language” in the sense of Joyce’s *Work in Progress* and the journal *transition*. Eliot’s “Waste Land” and “Hugh Selwyn Mauberley,” and Pound’s *Cantos*, are poems in historical English, with phrases from foreign languages being called upon to acknowledge that there are other cultures in the world.

There is indeed a “story of English,” but it has culminated in the proliferation of a language throughout the world that is primarily devoted to money and power. English is the dominant international language of politics, war, finance, aviation, professional sport, and tourism. In that sense it may be regarded as a cultural remnant of the Empire – but London is no longer the Empire’s center, and Westminster and the BBC are not its emblems. Shakespeare as supreme embodiment of the genius of the language has been dislodged, not by Broadway or Hollywood but by American television news programs and talk shows in their relation to the residue of common life.

What critical value, then, can we bring to a reading of *Work in Progress* and its successor, *Finnegans Wake*, if these are scandals to Leavis and alien to the genius of the English language? Is *Finnegans Wake* a sport, the sole instance of its kind, a source of pleasure for a few professional readers, or a great work of English fiction? Northrop Frye thought that there were four forms of prose fiction and that *Finnegans Wake* was an example of an irregular but not unique fifth – a form “traditionally associated with scriptures and sacred books, [it] treats life in terms of the fall and awakening of the human soul and the creation and apocalypse of nature.” He wrote, “The Bible is the definitive example of it; the Egyptian Book of the Dead and the Icelandic Prose Edda, both of which have left deep imprints on *Finnegans Wake*, also belong to it.”<sup>15</sup> But this doesn’t help in the detail of reading the *Wake*, even

14 T. S. Eliot, *Selected Prose*, ed. Frank Kermode (New York: Harcourt Brace Jovanovich, 1975), 39.

15 Northrop Frye, *Anatomy of Criticism: Four Essays* (Princeton: Princeton University Press, 1957), 314.

though it offers a majestic context in which the reading might be pursued. There is a special problem here. I am persuaded by Fritz Senn that we have succeeded – or that some scholars have – in reading the *Wake* in particles but not as a whole:

But while we can usually make an instructive show of select passages, we ought not to confuse the *Wake*'s exemplary complaisance with our understanding of it. When I started out, some thirty years ago, in the juvenile flush of those euphoric first unravelings of meaning, I hoped that within some decades we might jointly arrive at sufficient basic understanding (at the modest level of Roland McHugh's helpful *Annotations*) that would enable us to go beyond those resistant details and to make statements of more general import and validity, perhaps even in a scholarly way. We obviously haven't. (*Joyce's Dislocations*, xi)

It may be that the work of annotation is the necessary groundwork, the first act of reading, and that statements of more general import and validity may be made later. But the trouble with annotation is that the note, necessary and useful as it is, reduces Joyce's pages to their presumably normative origins. If I know the Irish language, I can report that "drawhure deelish" (*Finnegans Wake*, 455) means "dear sister." But the annotation stops when it has divined the source. When I read "Mades of ashens when you flirt spoil the lad but spare his shirt" (436), I place beside the rhyming "flirt" and "shirt" the rhyme of "Maid of Athens when we part, give oh give me back my heart," as well as the saw about sparing the rod and spoiling the child, but I don't get much gratification from putting these old tunes back where they seem to belong in Joyce's page.

There are other problems. I started reading *Ulysses* with the help of Eliot's review of it, especially the sentence in which he says that Joyce's use of the Homeric myth "is simply a way of controlling, of ordering, of giving a shape and a significance to the immense panorama of futility and anarchy which is contemporary history" (*Selected Prose*, 177). I have sometimes thought that it might be possible to extend that sentence to illuminate *Finnegans Wake*. If it were, it would supply a critical value and perhaps take the place of Leavis's appeal to the genius of the English language. But it wouldn't help much. Whether we regard Joyce's recourse to the *Odyssey* in *Ulysses* as reverential, casual, or both, at least Homer's poem is there, and it exerts on the modern story something of the pressure that Eliot describes. But in *Finnegans Wake* no single story is invoked beyond that of HCE and ALP. There

*There is indeed a "story of English," but it has culminated in the proliferation of a language throughout the world that is primarily devoted to money and power.*

are many sources, including *The Egyptian Book of the Dead*. There are hundreds of stories, including one about an Irish soldier shooting at a Russian general during the Crimean War, but their multiplicity ensures that none of them has the authority (however we measure that) of the *Odyssey* in *Ulysses*. Wherever we find the normative origin of one of Joyce's "dislocations," as Senn calls them, it does not impose a critical or cultural perspective: it does not do the work of Tiresias in "The Waste Land." These dislocations disperse the positivism of words in relation to their local referents, and they set resonances astir, but they do not exert any cultural pressure on the narrative.

Senn's idea of metastasis is more useful. What he has in mind is Joyce's way of making a sudden change in a sentence or phrase, indicating that something unusual is going on. His prime example is "Chrysostomos" on the first page of *Ulysses*. The word comes abruptly; it seems to have erupted onto the page from nowhere and to enforce a "rapid transition from one point of view to another" (*Joyce's Dislocations*, 139). You have to stop to ask what is happening, and you wonder whether Stephen Dedalus hasn't simply translated Buck Mulligan's gold-capped teeth into the Greek word meaning "golden-mouthed." Or maybe he is thinking of St. John Chrysostomos, divine and orator. We are given no syntactical help in deciding what the word is doing there; we have to work out something for ourselves. I compare the procedure with a phrase put in circulation many years ago by Marshall McLuhan: "juxtaposition without copula." He was led to it by certain developments in painting that culminated in abstract art, in which points of color and light are deployed in paintings that have no intent of reference or description. Without any copulas, we have to look at each painting and register its lines of force. Normative reduction is impossible: there is nothing to which the painting can be referred; there is no landscape, no face. It is the absence of the copula that makes such juxtapositions comparable to me-

tastases. Kenner claims that "juxtaposed objects render one another intelligible without conceptual interposition,"<sup>16</sup> and if I knew precisely what he means by "intelligible," I could be convinced. Jackson Pollock's drip paintings seem to dream of freeing themselves from human volition, as if their paint insisted on having only material existence (cf. T. J. Clark, *Farewell to an Idea: Episodes from a History of Modernism* [Yale University Press, 1999], 166–167). But the difference between metastases and juxtapositions without copula is that with metastases you try to supply a plausible copula, and you may succeed, at least to your own satisfaction. You can decide, to your own satisfaction, why "Chrysostomos" has broken into the paragraph. In the case of abstract paintings, there is no merit in guessing what the copula might have been, had there been one. Sometimes in *Finnegans Wake* the metastasis is so abrupt that you think you may be dealing with a misprint, as in a passage where the four masters are peering at Tristram and Iseult making love:

... drinking in draughts of purest air serene and revelling in the great outdoors, before the four of them, in the fair fine night, whilst the stars shine bright, by she light of he moon, we longed to be spoon, before her honeyoldloom, the plain effect being in point of fact their being in the whole, a seautition so shocking and scandalous.<sup>17</sup>

The obvious allusion here is to Ed Madden's song of 1919: "By the light of the silvery moon / I want to spoon / To my honey I'll croon love's tune / Honey moon keep a-shining in June / Your silv'ry beams will bring love dreams / We'll be cuddling soon / By the silvery moon." "By she light of he moon" looks like a mistake or a typographical joke, and instead turns out, I think, to be an invention, a metastasis. No critical force is entailed. The voyeurs, "the big four, the four master waves of Erin" (384), may be Matthew, Mark, Luke, and John, or any other quartet that comes to one's mind. Nothing is to be gained by going back to the New Testament. The technique of metastasis, as Joyce manages it, is akin to a stylistic device he practiced as early as *Dubliners*. In *Joyce's Voices* Kenner has described it as a deliberate discrepancy between narrative and diction – or, as I would prefer to say, between one diction and another, one diction giving place to another within the same sentence. It is like a change of key within the melodic line.

16 Hugh Kenner, *The Poetry of Ezra Pound* (Norfolk, CT: New Directions, reprinted 1974), 39.

17 James Joyce, *Finnegans Wake* (New York: Penguin, reprinted 1999), 385.

But I should not give the impression that the idea of the genius or spirit of the English language has been entirely set aside in *Finnegans Wake* or that Leavis's being scandalized is the last event in the case. Leavis urged that a writer of English should acknowledge the spirit of the language and respect it. That was sufficient tradition for him. Eliot extended the idea of tradition and enlarged its contents, but he continued to emphasize that writers should submit themselves to the tradition and establish themselves in a strong, devout relation to it. But it would also be possible to respect a tradition – or at least to take it seriously – while challenging it. M. M. Bakhtin is the critic we think of as recommending this stance, especially in his writings on Rabelais and in everything he has said about carnival and carnivalesque subversions of reality as officially prescribed. In his essay "Discourse in the Novel," Bakhtin says:

The resistance of a unitary, canonic language, of a national myth bolstered by a yet-unshaken unity, is still too strong for heteroglossia to relativize and decenter literary and language consciousness. This verbal-ideological decentering will occur only when a national culture loses its sealed-off and self-sufficient character, when it becomes conscious of itself as only one among other cultures and languages.<sup>18</sup>

18 M. M. Bakhtin, *The Dialogic Imagination: Four Essays*, trans. Caryl Emerson and Michael Holquist (Austin: University of Texas Press, 1981), 370.

This is the situation of England, or even of Britain as a "national culture," though Leavis was reluctant to admit it in 1933: it is one among other cultures and languages. The fact that English has become the dominant international language is not a consideration from which Leavis would have derived much satisfaction.

Still, it is hard to see *Finnegans Wake* as a politically subversive book or as the modern correlative to the third book of Rabelais's *Gargantua and Pantagruel*. It is a ludic book, though not a joke; at least it is more ludic than carnivalesque. The difference is that the carnivalesque needs a strong national or international culture to mock: there have to be laws to be obeyed, punishments to be meted out before the mockeries and saturnalia count. In 1939, when *Work in Progress* became *Finnegans Wake*, John Crowe Ransom welcomed it as a protest against the reality defined by science and positivism. It may still be that. Or, to bring things up to date and to think of inserting *Finnegans Wake* into our context rather than Joyce's, it may count as a protest against the forces that have turned science, positivism, banking, brokerage, and information technology into an omnivorous system. But when Joyce plays fast and loose with the English language, I recognize an impulse of play short of real subversion. He lacks an enemy that recognizes his existence. In the

absence (or the intangibility, which amounts to the same thing) of an enemy, Joyce's revolution of the word is an extreme and beautiful instance of burlesque – of "the high language of low purpose,"<sup>19</sup> as R. P. Blackmur called burlesque – and it has whatever force of dissent we assign to it; little enough, I think, and certainly not enough to make global institutions tremble. That is not Joyce's fault or his inadequacy, unless we think that a work of fiction must, to be any good, bring the house down. No houses will come down because of *Finnegans Wake*. It is enough that the spirit of play and dissent, a more comprehensive spirit than that of the English or any other language, be maintained. But I don't think of Joyce and *Finnegans Wake* in association with Rabelais, Voltaire, and Swift – writers who brought some houses down. ■

19 R. P. Blackmur, *Outsider at the Heart of Things*, ed. James T. Jones (Urbana: University of Illinois Press, 1989), 199.

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Photo of Dublin, O'Connell Bridge, from the Lawrence Collection, courtesy of the National Library of Ireland.



Denis Donoghue (NYU)



Orlando Patterson (Harvard University) and Evon Z. Vogt (Harvard University)

# Tribute to Daniel P. Moynihan

by Nathan Glazer

The following remarks were presented at the 1875th Stated Meeting, held in New York on November 3, 2003.

*Nathan Glazer, a Fellow of the American Academy since 1969, is Professor Emeritus of Sociology and Education at Harvard University.*

There have been many meetings, seminars, and events to memorialize the passing of Daniel P. Moynihan. He earned many distinctions, filled many important offices, wrote many books. He was four times senator from the state of New York, American ambassador to the United Nations, American ambassador to India, domestic advisor to President Nixon, professor of education and government at Harvard University, assistant secretary of labor in the administrations of Presidents Kennedy and Johnson, and a key initiator and founder of the Woodrow Wilson International Center for Scholars in Washington, D.C. And this is only a partial listing of the posts he held and the good work he did.

But today we pay tribute to his long and fruitful association with the American Academy of Arts and Sciences. He became a member of the Academy in 1966, when he was a professor at Harvard, but before that he had already been involved in and guided important projects of the Academy. The 1960s were marked by the increasing salience of the problems of race, poverty, and urban decline and disorder, and in the analysis of all of these Pat Moynihan was a master. He participated in Academy conferences on the increasingly turbulent issue of the condition of Negro Americans in the early 1960s, which climaxed in the publication in 1965 and 1966 of two large issues of *Daedalus* on the Negro American. Moynihan's major article in *Daedalus*, "Employment, Income

and the Ordeal of the Negro Family," was decisive in supplementing and clarifying his report to President Johnson on the disaster overcoming the Negro family – a report that had been massively misrepresented in the media and in public discussion. It described what was happening to the Negro family and argued that the answer lay not in social work but in jobs and income. Moynihan's article in *Daedalus* sharpened that point.

His involvement with the Academy's project on Negro Americans led directly to his leadership of an Academy project on the problem of poverty, which was clearly one root of the problems of Negro Americans. Pat Moynihan became the chairman of a continuing Academy seminar on race and poverty that met regularly during 1966 – 1967. This seminar resulted in the publication in 1969 of an important Academy volume, *On Understanding Poverty*, which Moynihan edited. In introducing the volume, Talcott Parsons, then president of the Academy, described it as "the result of the first continuing seminar of the Academy dealing with American domestic problems." Until then, the Academy's work in public policy had concentrated on security issues, the control of atomic arms, and the like. The book was widely noted, widely cited: It was an important contribution to the understanding of the complex problem of poverty.

Race, poverty, the family, and the social policies that tried to deal with race and poverty were continuing interests of Pat Moynihan as a writer, researcher, and policymaker. But his interests spread beyond these issues to the questions raised by ethnicity and ethnic con-



Photograph courtesy of Heinz Awards/Jim Harrison

flict, and this at a time when neither ethnicity nor ethnic conflict were much in the center of public or academic interest. Having begun his political career in New York City's Democratic Party, Moynihan of course could not be unaware of the significance of ethnicity and the power of ethnic attachments. But his interest was sharpened when I drew him into collaboration with me in the early 1960s in writing a book on the ethnic groups of New York City, entitled *Beyond the Melting Pot* (1963). It was not long after that book was published that we had to take account in a second edition of the increasing rancor and violence around issues of race, religion, and ethnicity.

In the wake of that book and as we saw the increasing salience of ethnic issues in various parts of the world in the 1970s, Moynihan and I decided to launch an Academy project on ethnicity, extending our concern from the United States to Europe, Asia, Latin America, Africa, and the great communist empires of Soviet Russia and China. This project resulted in the publication of our co-edited volume, *Ethnicity: Theory and Experience*, in 1975. It is still in print and widely cited despite the enormous expansion of publications in that field in the years since. That volume became the first in a series of Academy projects on immigration, ethnicity, and ethnic conflict in which the Academy cooperated with scholars in France, Germany,

and elsewhere, and which resulted in the publication of a number of important books. I should note here that Corinne Schelling of the Academy staff played a key role in bringing to fruition the publication of the books *On Understanding Poverty* and *Ethnicity: Theory and Experience*, and in extending the Academy's work on ethnicity and immigration into collaborative projects with scholars in other countries.

Despite Moynihan's great and continuing interest in these issues, his direct involvement in such projects was no longer possible when he became senator from New York in 1976. He had moved from writer, researcher, and academic to statesman – the word certainly fits rather better than its near synonym "politician," even though Moynihan was a master of the arts of politics, too, as indicated by his successive elections to the Senate with ever larger majorities.

Moynihan was known for his perspicuity and far-sightedness in drawing attention to important issues before others had taken much notice of them. In the 1980s he criticized the CIA's and other government agencies' estimates of the strength of the Soviet Union. He was no expert on Soviet Russia but he understood one thing that the experts apparently did not: the Union of Soviet Socialist Republics was a multiethnic empire in

*Continued on page 35*





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## The Independence of the Federal Judiciary

*Judith Resnik, Danny J. Boggs, and Howard Berman*

On May 15, 2003, the Academy held its 1870th Stated Meeting in Washington, D.C. Librarian of Congress James Billington welcomed Fellows and their guests to the second in a series of meetings focusing on the relationship of Congress and the Court. This event is part of the Academy's project on Congress and the Court. The steering committee members of the project are: cochairs Jesse Choper (UC Berkeley) and Robert C. Post (Yale Law School), Linda Greenhouse (*New York Times*), Abner J. Mikva (University of Chicago Law School),

Nelson W. Polsby (UC Berkeley), and Leslie C. Berlowitz (American Academy). Mikva moderated the program.

*Judith Resnik, a Fellow of the American Academy since 2001, is the Arthur Liman Professor of Law at Yale Law School.*

*Danny J. Boggs is Chief Judge in the United States Court of Appeals, Sixth Circuit.*

*Howard Berman is a Democratic Representative from California in the United States Congress.*

### Judith Resnik

Conversations about judicial independence tend to take one of two forms. The first provides generalities praising the importance of an independent judiciary and delighting in the American example, centered on Article III of the United States Constitution. To ground that aspect of the discussion, the text of Article III, Section 1 is worth revisiting. It reads:

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Under the provisions of Article III, life tenure and protected salaries are the markers of the independent federal judge.

The second sort of discussion about judicial independence is less celebratory and more anxious. Sparked by specific anecdotes anchored in particular moments in time, debaters argue that certain actions undermine judicial independence.

Examples abound. Begin with the process for appointing individuals to life-tenured judgeships. One concern is that a president, holding the constitutional power of nomination, may try to interfere with an independent judiciary by selecting people who are precommitted to certain worldviews or who pass specific litmus tests.

Another concern is that the Senate, constitutionally obliged to provide advice and consent, either is not living up to or is overstepping that mandate. In May of 2003, hearings in the Senate focused on these very questions, as we heard complaints from one quarter claiming a "crisis" of vacancies and from another quarter claiming "court packing."

Another area of concern relates to whether Congress has provided a sufficient number of life-tenured judgeships and funds adequate to pay for the salaries, the staff, the facilities, the security, the jurors, the marshals, the libraries, and the public defenders in the federal courts. Recently, members of the judiciary objected that Congress had set their salaries too low and that the Executive had budgeted too little for court renovations.

Control over jurisdiction is another arena of controversy. How many and what kinds of rights ought Congress to create by vesting new jurisdictional grants in the federal courts? What individuals ought to have access to the federal courts, as contrasted with state courts, agencies, or nothing? Are we “federalizing” too many cases or too few?

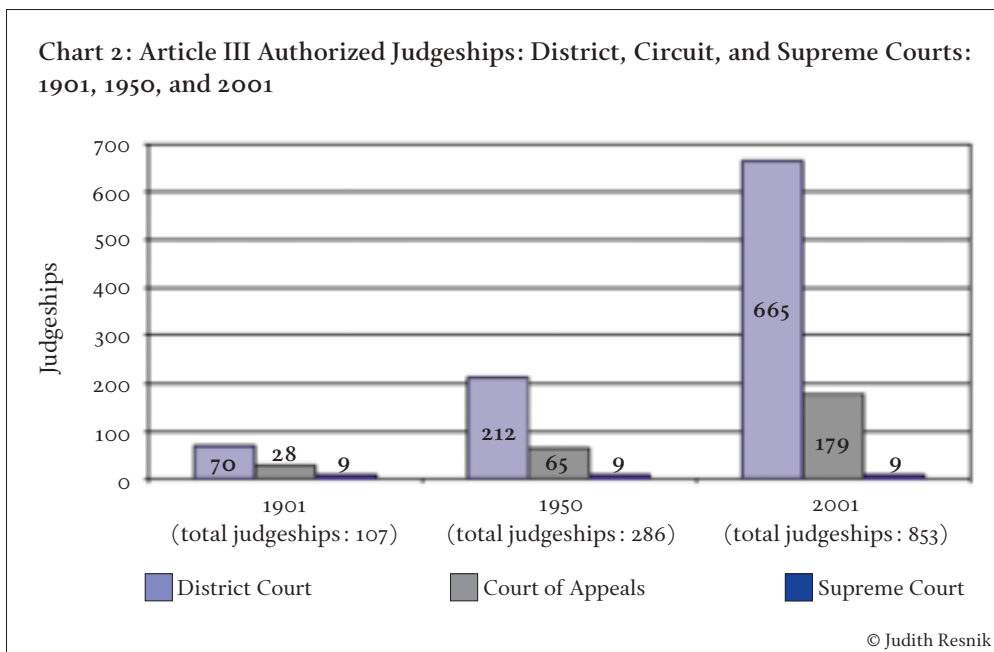
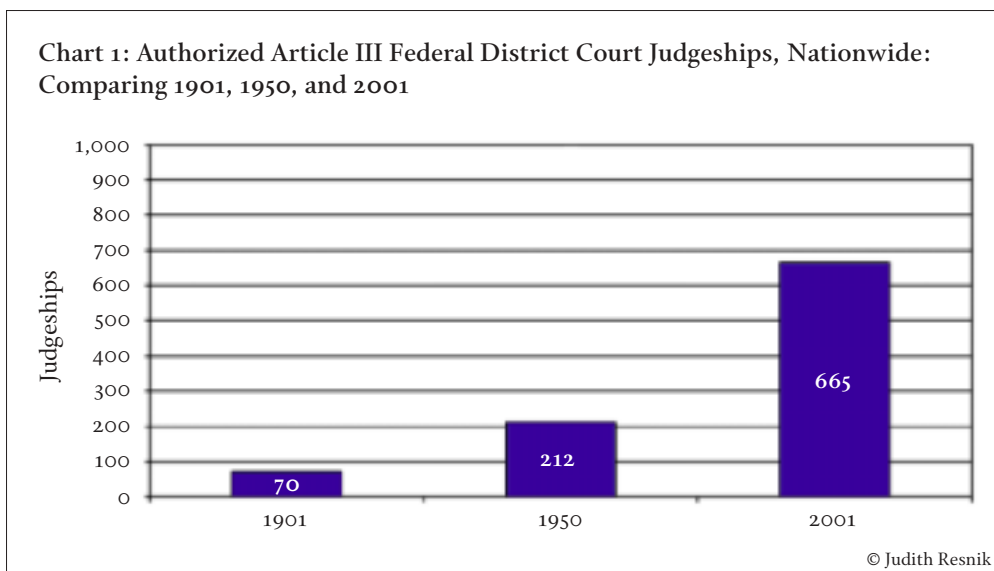
Other questions involve losing rights that already exist. Congress sometimes threatens to and occasionally does enact legislation limiting access to the federal courts, a practice objectors label “jurisdiction stripping.” Examples include bills about prayers in school and abortion rights.

Congress can also constrain the remedies that federal judges can order. Current issues arousing discord include whether Congress should cap tort damages and whether Congress should limit the power of courts to grant injunctive relief on environmental claims. Moving from legislation pending to that enacted, in the spring of 2003, Congress reduced the power of judges to make individualized decisions when sentencing criminal defendants.

Whether judicial independence is discussed in either a celebratory or an anxious mode, commentators recycle themes that have long been the focus: incursions from the Executive and the Congress. The fear of overreaching from other sectors of government stems from the English experience that predated the drafting of the United States Constitution. In seventeenth-century England, judges’ commissions expired when a king’s reign ended. (The 1701 Act of Settlement marked the beginning of the independence of judges from the Crown.)

But now, more than two hundred years later, structural changes in the American judiciary require that the discussion of judicial independence be reframed – to take into account new foes of, as well as new friends for, judicial independence.

A fast glimpse at the past one hundred years of interaction between the Congress and the courts demonstrates the need to return to the discussion of judicial independence to include narratives of cooperation as well as those of conflict. Further, we must focus on challenges not extant centuries ago. The power of the private sector to affect judicial independence needs to be understood, as does the growth of lower echelon jurists who wield federal adjudicatory power outside the parameters of Article III and are, therefore, vulnerable to incursions from all quarters. Finally, we must consider how the developments within the judi-



cial branch have resulted in an agenda-setting judiciary, taking an active role in policymaking that undermines the rationales for judicial independence.

### The Cooperative Expansion of Federal Judicial Authority and Personnel

Focus first on the remarkable growth of and commitment to federal adjudication. Congress and the courts, working together over a hundred years, have created a substantial, important judicial system. Congress has repeatedly looked to the federal courts to enforce new rights. Congress has endowed the federal judiciary with significant resources. Congress and the federal judiciary have worked together to invent whole new sets of federal judges and to empower them to decide hundreds of thou-

sands of federal claims. The joint venture of the creation of the federal judiciary as we understand it today came in part through a re-reading of the constitutional text of Article III – rendering legal the adjudicatory authority of federal judges who lack life tenure and protected salaries.

As Chart 1 indicates, a hundred years ago, about 70 trial judges were dispersed across the United States. In several states – such as Maryland, Indiana, and Massachusetts – a single district judge presided. Today, more than 665 judgeships exist. As Chart 2 makes plain, in 1901 fewer than 30 judges staffed the appellate courts; today some 180 serve.

The number of judges has grown, and so has their jurisdiction. During the twentieth century, Congress created federal securities law, federal environmental law, federal civil rights

law, federal consumer law, and much more. Because of this production, we are all federal rights holders, possessing new and important rights that affect our lives in many ways – from taxes and pensions to the water we drink and our personal security.

The power of the federal judiciary does not come from its size and docket alone. During the second half of the twentieth century, life-tenured judges (constitutional judges) gained the power to appoint magistrate and bankruptcy judges (statutory judges), who serve for fixed and renewable terms. Specifically, in 1968, the Congress created the position of federal magistrate.

As Chart 3 illustrates, that job was once conceived as primarily part time (with 450 part-time positions in 1971). But today it is primarily a full-time job (with more than 470 serving

as full-time judges in 2001). In addition, in 1984, Congress created another group – bankruptcy judges, now numbering more than 330, as Chart 4 details. Magistrate and bankruptcy judges serve for fixed and renewable terms of eight and fourteen years, respectively.

Unlike Article III judges who have life tenure and protected salaries, the jobs of the statutory judges could be abolished and their salaries cut. But magistrate and bankruptcy judges have courtrooms in federal courthouses, and they do a good deal of the same work as life-tenured judges. For example, magistrates can preside, with parties' consent, at jury trials; both magistrate and bankruptcy judges have the power of contempt. Also, bankruptcy judges may sit on panels to provide appellate review to decisions made by individual bankruptcy judges.

*Structural changes in the American judiciary require the discussion of judicial independence to be reframed to take into account new foes of, as well as new friends for, judicial independence.*

Chart 5 puts all of these positions together to show all of the judges sitting in federal courthouses around the United States. Those without life tenure outnumber those with life tenure.

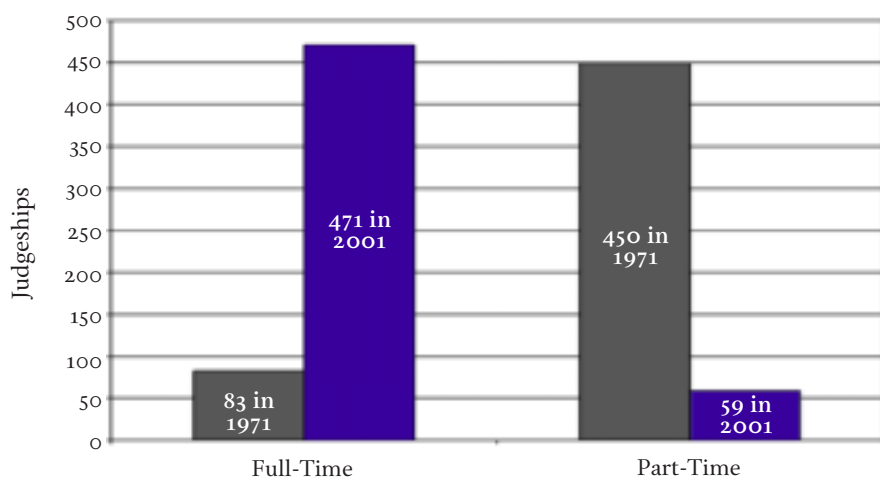
In the early part of the twentieth century, the Supreme Court was loath to permit too much devolution of the “essential attributes of judicial power.” By century’s end, however, the Court had reread Article III to enable the shift of significant amounts of federal adjudicatory power to non-Article III judges. Under such interpretations, yet another cohort of judges – termed Administrative Law Judges (ALJs) and today numbering about 1,400 (as is detailed in Chart 6) – make thousands of adjudicatory decisions in federal agencies. Thus, much of federal adjudication occurs outside buildings labeled federal courthouses, and hundreds of judges important to the lives of claimants do not have life tenure.

A caveat is in order. The charts do not include all those who do judging in federal agencies, but show only those judges chartered under the 1946 Administrative Procedure Act (APA) and therefore protected through special selection and dismissal provisions. Hundreds of others – called presiding officers, administrative judges, hearing officers, or examiners (constituting what Professor Paul Verkuil has called “the real hidden judiciary”) – are line agency employees who decide thousands of cases but without the protections that the APA provides to both ALJs and disputants.

Today we take for granted the purpose and power of the lower federal courts. We even have a shorthand for it: “don’t make a federal case out of it.” But that phrase was not common much before the 1950s. In short, the lower federal courts as we know them today did not exist a hundred years ago.

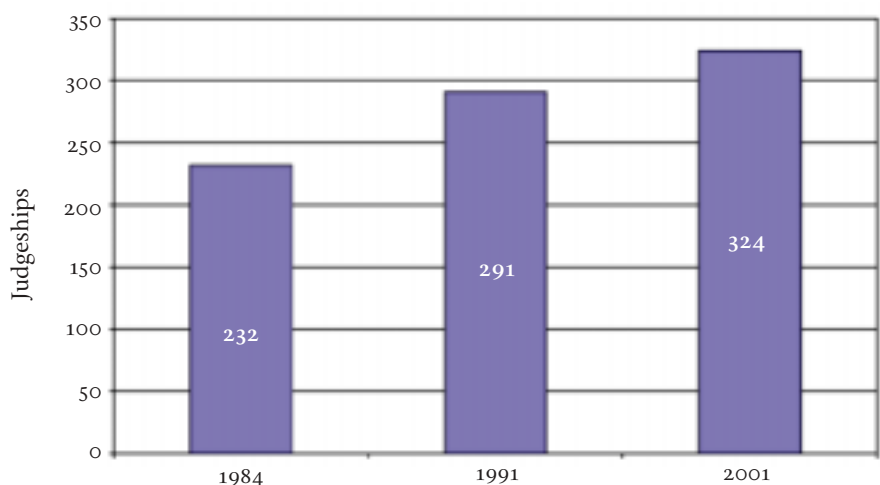
Consider this enormous expansion of judicial resources and notice how much of it came about through reliance on good will among all three branches. Dozens of shared initiatives pro-

Chart 3: Magistrate Judgeships: 1971 and 2001



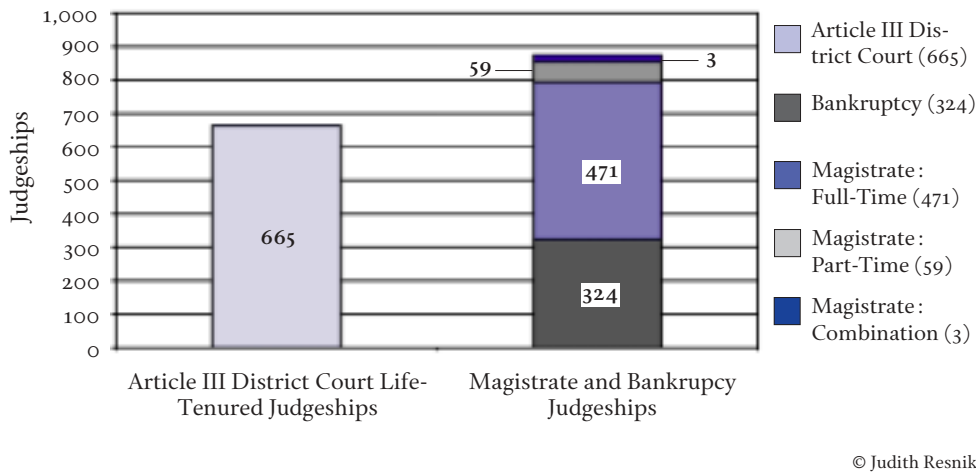
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Chart 4: Authorized Bankruptcy Judgeships: 1984, 1991, and 2001



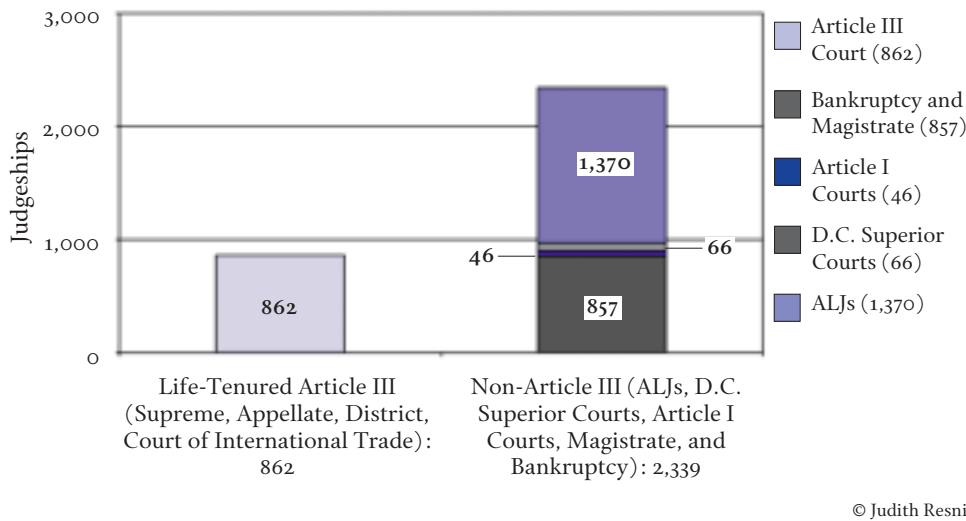
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**Chart 5: Authorized Trial-Level Federal Judgeships in Article III Courts, Nationwide: 2001**



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**Chart 6: Authorized Federal Judgeships, Including Article I Courts and Administrative Law Judges, Nationwide: 2001**



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duced the current landscape, with more than 550 federal courthouses, more than 300,000 annual civil and criminal filings and a million bankruptcy filings in the federal courts, as well as tens of thousands more in federal agencies, resulting in decisions articulating the meaning of and enforcing rights under federal law. The cooperative work of Congress, the courts, and the Executive has equipped this nation with more than 4,000 judicial officers in a judicial hierarchy at whose top sit life-tenured Article III judges.

### New and Old Tensions

What is the import of this manufacture of judges when, instead of cooperation, we enter periods of conflict between the courts and Congress? Sometimes, either Congress or the Executive objects to decisions by individual judges

in individual cases, dislikes decisions by the Supreme Court, or rejects the idea of Americans holding federal rights. Sometimes, Congress or the Executive seeks to retract rights and remedies by limiting the power of federal judges, by requiring that disputants use privately sponsored dispute-resolution programs, or by permitting disputants to be heard only in specially created courts run by the president.

We have many recent examples. As I mentioned, Congress has just limited the power of judges over sentences. In the last decade, federal legislation divested federal courts of some jurisdiction over cases involving aliens and prisoners, and limited redress for certain kinds of securities law violations. In the last few years, the president has chosen to go outside of both the federal court and the military justice system altogether to create new military commissions with broad jurisdictional authority.

Return then to Article III – our emblem of judicial independence in the United States – and revisit its text. While popular understandings imagine three robust branches of government, significant separation of powers, and judges able to make rulings on the merits of cases without fear of losing their jobs or their resources, the constitutional text says less than might be expected.

Article III provides only for life tenure and individual salary protection and does so, today, for just a subset of our federal judges. Even for the constitutionally protected judges, Article III misses completely the idea of budgets, of salary-setting independent of Congress, and of the institutional needs of a judiciary as a provider of services to the millions of litigants in need of its attention. Economically, the judiciary is dependent on Congress. Furthermore, as the judiciary has expanded, it is ever more reliant on Congress – for staff, for surrogate and subsidiary judges, indeed, for its very ability to work. Conscious of that dependence, federal judicial officers provide detailed explanations to Congress of the judiciary’s needs and budgetary priorities.

And if we are to worry about conflict between Congress and those judges with life tenure, look again at the “pictures” I have provided of the federal courts and stare hard at those bar graphs where the tallest bar represents all those judges who do not have life tenure.

No mention is made of such persons in Article III, but through creative interpretations of Article III, these judges today hold a good deal of federal power. They exist by virtue of statute and can be decommissioned by statute.

For judges who work in administrative agencies, their vulnerability to Congress was made plain when, in the 1990s, Congress stopped funding the Administrative Conference of the United States (ACUS), an institution that had been dedicated to evaluating and supporting the administrative judiciary. Administrative judges are also worried about incursions from the Executive. Agencies are now trying to avoid using ALJs (who gain some independence through the Administration Procedure Act) by relying instead on other employees to serve as temporary judges. Indeed, Attorney General John Ashcroft took the position that he had unfettered authority to treat immigration law judges (who were not APA-charted ALJs) as ordinary employees of the Department of Justice and to reassign them as he thought appropriate.

Thus, developments of the last century have produced hundreds of federal judges who have less structural insulation from actions of an aggressive Executive and an aggressive Congress. Moreover, changes during the last century have also produced the possibility that the judiciary itself can pose threats to judicial independence.

## *The more the judiciary takes policy positions outside of adjudication, the harder it is for the judiciary to stay separate from, and independent of, a certain form of politics.*

One question addresses the wisdom of creating a system in which constitutional judges have the power to “clone” – that is, to select the statutory judges who serve inside our federal courts. The hundreds of magistrate and bankruptcy judges obtain their charters (of eight and fourteen years, respectively) from other judges, who can reappoint them or not. Thus far, a distinguished group of individuals has come to play an important role, but we have not come to grips with two issues: whether a significant proportion of federal judges should be selected with little democratic input, and how to decide what behavior merits reappointment.

Other questions relate to the role that this collection of thousands of judges ought to take in our polity. Over the past hundred years, we have not only manufactured judgeships but also, for the first time in history, created the possibility for a judiciary that has the administrative and technological capacity to act strategically over time – not only in individual cases but as agenda setters and lobbyists in Congress. The federal courts have gained a corporate structure that permits the judiciary to function in some respects as an interest group.

A quick summary of the infrastructure and the agendas of the federal courts is necessary to understanding why this transformation is relevant to the issue of judicial independence. The second chart showed some hundred life-tenured judges in 1901. Those judges had little institutional means of talking with each other, let alone to anyone else. The attorney general gave Congress reports on the federal courts and asked Congress for the judiciary’s funds.

As Chief Justice William Howard Taft put it, each judge had “to paddle his own canoe.”

Of course, judges needed to become organized. But the question is organized to do what? In the 1920s, Congress created an official policy-making body of judges, now called the Judicial Conference of the United States, through which 27 judges, with the chief justice of the Supreme Court presiding, adopt official policy positions through a vote of that body. In 1939, Congress created the Administrative Office of the United States Courts, which collects data, submits budgets, and oversees the need for facilities for the federal court system. In 1967, the Federal Judicial Center was established to focus on education and research.

In the early days, the Judicial Conference avoided taking positions on matters of what it termed “legislative policy,” such as whether Congress should create new federal rights. Beginning in the 1950s, under Earl Warren, the Judicial Conference occasionally raised questions about some federal jurisdictional provisions but often demurred on the grounds that such issues were matters for Congress.

Under Warren Burger’s tenure, chief justices began to make “state of the judiciary” speeches. Thereafter, via a “futures planning process,” the Judicial Conference – the official policy arm of the federal judiciary – approved 93 recommendations to Congress as part of an official document, entitled the *Long Range Plan for the Federal Courts*, issued in 1995.

Specifically, the Judicial Conference has argued for limited growth in the number of life-tenured judges, for greater reliance on adjudication by judges lacking life tenure, for less federal jurisdiction, and for a presumption against creation of federal rights if enforced in federal court.

For example, the Judicial Conference told Congress – while legislation was pending – that it should not create new rights enforceable in federal courts if computers crashed in Y2K, that Congress should not give veterans access to life-tenured judges to challenge benefit awards, and that Congress should not vest jurisdiction in federal courts for challenges to health-care providers.

Moreover, both before and after the passage of the Violence Against Women Act, the chief justice raised objections to it. Subsequently, in 2000, he wrote the five-person majority opinion in *United States v. Morrison* that held the civil rights remedy of that act unconstitutional. In short, over the last few decades, the federal judiciary as a corporate entity has taken on

the roles of education, planning, and lobbying about the shape, nature, and future of judging and the role of federal law.

These new roles leave the judiciary open to a form of politicization that we have only begun to acknowledge. Insiders in the adjudicatory system know that the judiciary is an organization that takes positions in Congress.

Therefore, sophisticated repeat players (such as the government, insurance companies, corporations, and civil rights groups) now attempt to lobby the judiciary to take certain positions – for example, to support a bill to take class actions pending in state court and federalize them. The more the judiciary takes policy positions outside of adjudication, the harder it is for the judiciary to stay separate from, and independent of, a certain form of politics.

## **Taking Up the New Challenges**

I began by providing a cheerful picture of the tremendous and useful development of the lower federal courts. I then described how a dynamic of cooperation produced the important federal judicial system that is familiar today.

But I have also analyzed how the inventions of the last century have created new sets of judges more vulnerable than the iconic judges imagined by reading our constitutional text. I then raised new questions about how challenging it is to respond to the high demands for judges and about what kind of behavior is appropriate when judges use their voice not to adjudicate individual actions but rather to develop agendas on social policy.

I hope we live in a world in which my uncheerful scenarios are rare. They are not, however, forbidden by constitutional text. Rather they are dependent on culture – and that culture is, I think, at risk from all three branches. In my view, no branch is always either a hero or a villain.

My hope is that we will consider how to promote a culture that cherishes judging, respects individual judgments when rendered after deliberation, obliges judges to take responsibility for their decisions through explanation and publication, and constrains judges when they move outside their role as adjudicators. We must make self-conscious decisions to ensure that the federal judiciary will not become just another agency, pushing its own worldview and agendas, and to ensure that the executive branch and Congress will appreciate the seriousness of purpose when individual judges try to do their best.

## Danny J. Boggs

In my remarks on the independence of the federal judiciary, I will try to adhere strictly to the topic of judicial independence and true threats to that independence, as distinguished from things that may annoy the federal judiciary, hinder or promote the effectiveness of the federal judiciary, or advance or retard the reputation of one or more members of the federal judiciary. I so limit myself because I believe that it is too easy to say that anything that judges don't like is a threat to their independence. What may be a threat to good government or to good use of taxpayers' money or to any number of other desirable things is not necessarily a threat to the independence of the judiciary as contemplated in the Constitution and other founding documents.

My basic theme today will be that the independence of the judiciary remains intact and largely unthreatened. I find my colleagues on the bench to be as independent as the proverbial hog on ice. With respect to my own activities, I know that efforts may be undertaken that appear to be an attempt to intimidate me or to affect my decisions in an improper way, but my perception is that the effect of such activities is zero. Observing my colleagues, I have at times questioned their reading of a record or their logical deductions or their understanding of constitutional history, but I have never thought that their opinions represented anything other than their actual, even if at times wrongheaded, execution of their judicial duties.

So, what are some of the possible or proposed threats to judicial independence, and how should we assess them? I will mention several in this list, but I will not have time to address each of them in my ten minutes: judicial pay; delays in the nomination or confirmation of judges; attacks upon, or abuse of, persons nominated to the federal bench; abuse of, or attacks upon, persons now holding judicial office; attendance at conferences by judges, or attempts to limit what judges attend, read, or say; and congressional intrusion upon judges by requiring reports on or by them.

With respect to the process of appointing judges, I will not take a position on the specifics of the controversy currently embroiling that process or on the variety of controversies that have occurred in that same process for at least the past quarter-century. I will say that it does appear to me, from knowing a fair amount about my colleagues on the federal bench and quite a number of the nominees, that there is a considerable lack of alignment between the

actual talents, qualifications, and positions of nominees and the manner in which they are treated in the confirmation process. In other words, the attacking, delaying, or defeating of nominees on the basis of their supposed extremism or lack of qualifications or lack of temperament is a process that is, to paraphrase a comment once made by Justice Potter Stewart in regard to the death penalty, "freakishly and wantonly imposed" in the "same way that being struck by lightning is."

Rufus Choate, 150 years ago, said that if judges in Massachusetts were to be elected, they would be "abused by the press, abused on the stump, and charged ten thousand times over with being very little of a lawyer and a good deal of a knave or a boor." Though we do not have election of federal judges, it does sometimes seem that very little has changed in the past 150 years. Granted, certain judges nominated by the current president and by past presidents have been accused, perhaps correctly, of some measure of extremism. Yet throughout the years, nominees who have been attacked as extremists have rarely differed radically in actual qualities from those who have glided through the confirmation process as moderates.

Indeed, looking at the broad range of persons of my knowledge nominated and appointed over this same period, it seems to me that the judges nominated to the bench by presidents of either party represent a fair bell curve of legal attitudes and opinions – a curve whose central point approximately matches the position of the publicly active lawyers who have supported the appointing president. Although attacks may be made on nominees for being too far to the right or left of most Americans, that does not represent a threat to the independence of the judiciary, because nominees of both parties will not commit to particular positions. They will be attacked for their failure to commit, and then defended, and their attackers and defenders will change sides, along with the administration. But this would be a threat only if nominees did commit to a position. Justice Anthony M. Kennedy, speaking recently at the University of Virginia, warned both parties that they should start thinking about the dangers they pose to judicial independence by insisting on nominees who have particular views.

Abraham Lincoln made what is perhaps the best statement on this matter in a conversation with George Sewall Boutwell, who included it in his *Reminiscences of Sixty Years in Public Affairs*. Lincoln, who had just nominated Salmon P. Chase as chief justice, candidly said that he wanted Chase to rule certain ways – for example, by upholding the Emancipation Proclama-

## *The independence of the judiciary remains intact and largely unthreatened.*

tion – but added, "We cannot ask a man what he will do, and if we should, and he should answer us, we should despise him for it." I think that declining to answer is indeed the proper answer, and I think that it will continue to be the answer that nominees of both parties will give.

The history of attacks on the sitting judiciary, of course, is a rich and varied one, from the attacks on Federalist judges and "midnight justices," to the Senate's initial refusal to confirm Justice Roger B. Taney, to Teddy Roosevelt's attack on his own appointee, Oliver Wendell Holmes (he said he could have carved a justice with a firmer backbone out of a banana), to Franklin D. Roosevelt's efforts against "the four horsemen" (the Supreme Court justices who persisted in voting against his New Deal laws), to the attacks on Earl Warren, and up to the present. These activities may certainly have threatened the digestion of the judges involved, but in what sense can we say that they affected their independence?

Clearly, many such efforts are designed to change the judicial opinions of judges for reasons outside the court record or other documents that judges should legitimately consult. For example, Tony Mauro recently reported in *Legal Times* (May 12, 2003) that a certain organization "has announced plans to demonstrate wherever Supreme Court justices speak in public, until the Court hands down its decision in the University of Michigan . . . cases" concerning affirmative action. He quoted a representative of that organization as saying, "It won't be something the justices can just push aside." Well, despite that statement, I confidently expect that the demonstrations will have no effect whatsoever on those judges.

In a similar vein, during the circuit argument on one of those cases, our chief judge, Boyce Martin, with whom I had substantive disagreements on the case, was confronted by a counsel who began her argument as follows (and this is from the transcript): "I come before you with over there on the table some fifty thousand petition signatures representing fifty thousand plus Americans . . ."

At that point, Martin burst out, "I don't think petitions are what decide lawsuits. We decide the case on the law and the facts, and we want it very clear that we are not policymakers, we

## *The actions of federal judges are subject to legitimate criticism and are not immune from illegitimate criticism – but those actions are the independent actions of the judges.*

are not a legislative body. . . . So the petitions are not of any benefit in our decision making.” This was a position in which, I know, all of our judges concurred.

Now, I must say that bad decisions and unindependent decisions are not necessarily the same. In the early 1990s, as part of a group of American judges, I had the honor of spending a total of six weeks with some Russian judges, whom we visited on three separate occasions before, during, and after the collapse of the Soviet Union. During our early visits, in 1991, we were told that their great fear was “telephone justice,” wherein a party would call the judges and tell them how to decide. One of the more cynical dissident defense attorneys said, “You know, they talk about telephone justice, but that’s just for the stupid ones. The smart ones don’t have to be called.”

With respect to pay, it should be noted that the founders were quite concerned about the ability of Congress to affect judges’ decisions by the manipulation of the pay scale. As Alexander Hamilton stated in *The Federalist Papers*, no. 79, “A power over a man’s subsistence amounts to a power over his will.” In our modern, inflation-prone society, this phenomenon has taken a variety of forms. It would obviously be a challenge to independence for Congress to randomly cut judges’ salaries by 3 percent one year and by 14 percent another; however, simply refusing to raise salaries in order to match the debasement of the currency would create the same effect. In 1967, a year not usually thought to embody judicial extravagance, judicial salaries and congressional salaries were \$42,500 – a figure that, when adjusted for inflation, would require a pay raise of over \$70,000 dollars to match today. While I now feel little embarrassment over that, especially given that my youngest child graduated from college last June, the direction of that effect, as well as the effects of quite a number of other individual measures, could, if driven to extremes, threaten judicial independence. For example, had there been no pay raises since 1967, the result would have

been equivalent to a pay cut of over 80 percent. So there are things that nibble around the edges, but I think they only become true threats if taken to extremes. In the same way, a total refusal by the president to nominate, or by the Senate to confirm, new judges – so that the judiciary would be staffed only by a shrinking cadre of persons whose proclivities were thought to be known – could also have a negative effect.

I will conclude simply by saying that the actions of federal judges are subject to legitimate criticism and are not immune from illegitimate criticism – but those actions are the independent actions of the judges. As was said of another controversial group, in a mocking ditty, “You cannot hope to bribe nor twist / Thank God, the British journalist / But seeing what unbribed he’ll do / There really is no reason to.”

### Howard Berman

The congressional-judicial relationship involves a certain degree of inherent conflict. Congress controls the resources (funds, buildings, etc.) that courts need to function; controls the number of judgeships; advises and consents on judicial vacancies; and determines the jurisdiction of the courts. The federal courts, for their part, interpret and sometimes overturn the laws Congress writes.

I suppose much of the conflict created by congressional regulation of the courts could be avoided if Congress simply acceded to the demands of the judicial branch on issues under congressional control. But from my perspective, there is a certain amount of congressional regulation of the courts that is both appropriate and constitutionally mandated. At the same time, there is no doubt that Congress can go, and at times has gone, too far in regulating courts.

It is probably impossible to establish a bright line between appropriate and inappropriate congressional regulations of the courts. In fact, the checks-and-balances system of government established by the founding fathers ensures that a bright line cannot be drawn. But in general terms, I believe it is appropriate for Congress to regulate administration of the judicial branch, but not appropriate for Congress to regulate the judicial function.

I can best explain my thinking on appropriate congressional regulation of the courts by discussing specific examples:

- Courthouse construction. Courts need to do a better job of being efficient and minimizing requests for dwindling federal dollars. For example, even though a new federal courthouse was built in Los Angeles just a decade ago, there is now a need for a new one. Why wasn’t a sufficiently large courthouse built a decade ago, when it would have been much cheaper to build it? Why won’t judges agree to courtroom sharing when there are insufficient resources to build a separate courtroom for every judge?

- Advising and consenting on judicial vacancies.

- Creation of new judgeships. Judiciary Subcommittee Chair Lamar Smith requested a General Accounting Office (GAO) study to “analyze merits of weighted filings and adjusted case filing methods used by Judicial Conference.”

- Statutory requirements that judges disclose travel junkets and personal finances. While such statutory requirements are appropriate, it is also appropriate for courts to have the ability to redact those disclosures, and Congress has given courts the ability to do such redactions.

- Judicial pay. I support paying judges more and restoring missed judicial Cost of Living Adjustments (COLAs). I also support repeal of Section 140, which requires Congress to pass additional authorization each year for increases in judicial pay, including COLAs. I would have supported an amendment to repeal Section 140 if the Judiciary Committee had marked up the Federal Courts Improvement Act of 2003 at its meeting of May 7, 2003.

Even though it may be appropriate for Congress to regulate courts in certain areas, that does not mean that Congress always has to exercise its authority. In many circumstances, the federal courts can exercise this authority, and if the courts do so responsibly, Congress should defer to such judicial self-regulation. However, if the courts fail to self-regulate responsibly, Congress has the responsibility to step in and exert its own authority.

The process for amending the federal rules of evidence, civil procedure, appellate procedure, and criminal procedure is a great example of how judicial self-regulation can work.

Unpublished decisions are another example of successful self-regulation. As a result of significant public outcry, the Subcommittee on Courts, the Internet, and Intellectual Property held hearings and had discussions about legislation. The federal courts effectively pre-

empted congressional regulation by adopting their own new rules on unpublished opinions through the Judicial Conference.

Unexplained decisions may end up being a similar success. HR 700, introduced by Representative Ron Paul, would amend the federal rules of appellate procedure to require federal appeals courts to issue written opinions in certain cases, and thus prohibit appeals courts from engaging in the practice of affirming lower-court decisions in one sentence. A committee of the Judicial Conference has begun the preliminary process of examining whether to recommend that the Judicial Conference adopt such a change.

However, the judicial privacy issue is one example of an area in which judicial self-regulation was not working. Several federal judges expressed concern that the Administrative Office of the Courts (AO) was monitoring their electronic communications. When those federal judges and several members of Congress, including myself, expressed concern about this, the AO was not cooperative and resisted addressing these concerns. I proposed legislation that prohibited AO interception of electronic communications unless pursuant to Judicial Conference policy. Even though this legislation left it to the courts to regulate themselves, the AO fought against it. I tried to work with AO on a compromise judicial privacy amendment, but the AO continued to oppose it. Finally, I went so far as agreeing to withdraw my compromise amendment if AO would send a letter disavowing its intent to monitor and declaring that it did not have authority to monitor unless the Judicial Conference directed it to do so. However, the letter the AO eventually sent was missing the critical language providing these assurances.

In such circumstances, it is entirely appropriate that Congress reclaim its authority to regulate the administration of the courts. Where the courts don't self-regulate responsibly, Congress has the responsibility to step in.

There are also adequate examples of improper congressional interference with judicial functions.

Mandatory minimum sentences improperly tie the hands of judges. The central and crucial judicial function is to look at the facts of a case, interpret the law, and, on the basis of the facts and law, decide what outcome will serve justice. Only the judge who has sat through the trial can determine how to serve justice. Certainly, members of Congress cannot decide, years before a crime has ever been committed, the appropriate punishment for that crime.

## *Where the courts don't self-regulate responsibly, Congress has the responsibility to step in.*

As inappropriate as it is for Congress to tie the hands of courts through mandatory minimums, it is exponentially more inappropriate for Congress to seek to pressure judges who don't share its perspective on mandatory minimums. Yet this Republican Congress has done just that to a federal judge from the District of Minnesota. Because that judge testified at a congressional hearing in opposition to mandatory minimums at the invitation of the Democratic minority, the majority has engaged in a campaign to hound him. The Judiciary Committee issued a far-ranging subpoena to demand records related to the judge. Furthermore, the chair of the Judiciary Committee has commissioned a GAO study of this judge's practices regarding downward departures from mandatory minimums.

Legislation to limit judicial review of statutes is also inappropriate. There are a variety of examples of such legislation:

- The Healthy Forests Restoration Act of 2003, HR 1904, which establishes a fifteen-day time limit for filing appeals, directs courts to defer to agency determinations on balance of harm and public interest when considering requests for preliminary injunctions, requires courts to render a final determination within one hundred days, and limits lengths of preliminary injunctions to forty-five days.
- NextWave bankruptcy legislation from the 106th Congress, which would have created a specialized, expedited review process for proposed statutory settlement of the NextWave litigation, in particular requiring courts to act within specified time periods and limiting courts to review of constitutional questions.
- The Class Action Fairness Act of 2003, HR 1115, which provides the right to seek an interlocutory appeal of a decision on class certification, and provides an automatic stay of that decision until the appeal is decided.

What possesses Congress when it steps over the appropriate bounds of appropriate regulation of the courts? While I do not mean to justify congressional overregulation of the courts, the courts should understand its roots. One example of what inspires congressional ire toward the courts is judicial activism, wherein the courts use their judicial power to make law and/or policy.

Judges reduce public and congressional respect for the judicial branch when they engage in either conservative or liberal judicial activism. The perception of impartiality is critical to the public's respecting and obeying judicial decisions.

State sovereign immunity decisions display conservative judicial activism. Courts, particularly the Supreme Court, are ignoring the specific words of the 11th Amendment and crafting a theory of state sovereign immunity from "fundamental postulates" that underlie the constitutional scheme. Yet these same judges claim to be strict constructionists and reject the idea that a right to privacy can be inferred from the constitutional scheme.

The courts' positions on state sovereign immunity, contrasted with their positions on privacy, are totally inconsistent and lead many to the conclusion that the courts have a political agenda.

## *Questions and Answers*

**Jesse Choper:** It strikes me that the issue of adequate judicial compensation is much more connected to the quality of the judiciary and to its diverse nature than it is to judicial independence. If Congress is going to limit travel funds for judges, then it is likely that Congress is not going to give them salary raises that keep pace with inflation, and this will affect judges regardless of their voting records or whether their rulings agree with the prevailing political majority. I'm wondering why, back in the eighteenth century, the drafters of the Constitution provided against reduction in judicial compensation in Article III. Was it to protect quality? Or was it to secure independence?

**Danny J. Boggs:** I think the constitutional provision was included in light of the British king having had the power to cut off people's salaries, or cut them in half, or cut them to one-tenth; that was the immediate evil being addressed. If you read *The Federalist Papers*, no. 79, you'll see that the founders also understood that the debasement of our currency was a potential problem. As I indicated in my remarks, I don't see this as a major threat today – it's just something that's nibbling around the edges. But I can certainly see people saying that if we judges collectively make a lot of decisions that annoy Congress, then Congress is unlikely to put its neck out by raising our pay to compensate for the restrictions. No individual judge at the circuit level is likely to annoy Congress that much all by himself or herself. Lots of federal judges share the view that if



they were collectively more complacent about Congress's bills in terms of interpreting them or their constitutionality, then Congress would be more cooperative in approving pay raises and other kinds of judicial funding.

**Abner J. Mikva:** A Canadian Supreme Court decision says that questions of financing must be handled outside of both the Congress and the courts. The government generates a more or less independent commission to address any such issue, and there's a minimal judicial review of the outcome. Around the world, as people worry about independence, they worry about resources for the judiciary. Here in the United States, I think we have to look at the resources not only as the actual salary line for someone holding a federal judgeship, but also as the individual's ability to do the work. A judgeship conferred through Congress is not only more expensive in terms of dollars; it also requires a congressional act. The federal judiciary can decide internally to create more magistrate judgeships, but new bankruptcy judgeships require Congressional approval of a salary line. If we want more independent actors, however, and if we think that independence derives from some degree of economic freedom, we need to recognize that we aren't moving in that direction under the current system. Other judiciaries around the world, in constitutional democracies, are trying to develop mechanisms to create more structural space. Actually, in this country, some state courts have taken the view that the separation of powers assumes that resources are essential to the idea of the judiciary as a functioning institution.

**Robert C. Post:** I'd like to ask a question about judicial independence. It is certainly the case that judges must have a free and independent mind in order properly to decide a case. This is the sense of judicial independence referred to by Judge Boggs. But there is a second sense of judicial independence that was referred to by Professor Resnik. If we think of the federal judiciary as the third branch of government, which is organized to accomplish discrete objectives, then we have to also imagine judges as connected to each other in the service of these objectives. We might believe, for example, that judges who are underutilized should be required to transfer to districts that are severely in arrears, so that the judicial branch of government can fulfill its institutional mission of offering prompt and efficient justice. I'd like to ask the speakers to comment on how they imagine judicial independence working in this second sense. How does the judicial independence necessary for making discrete decisions fit with the interdependence neces-



Judith Resnik



Danny J. Boggs



Howard Berman



Abner J. Mikva

sary for the judicial branch as a whole to realize its organizational objectives?

**Judith Resnik:** Your question brings me to another aspect of judicial independence: valuing the activity of judging itself. In my view, we are at risk of losing the understanding that judging is a desirable and a good kind of decision making. The risk is coming, in part, from judges who – in their eagerness to support “alternative dispute resolution” – insist that a “bad settlement is better than a good trial.” That very sentiment (and those words) can be found in published opinions and in commentary by judges teaching other judges how to settle cases. As of 2003, of one hundred civil cases that are filed, fewer than three begin a trial. Today, we are in an era in which many judges themselves do not have a positive attitude toward the activity of adjudication.

Let me turn to another pressure on the model of fair and deliberate judgment: aggregate decision making. An example from a case last term involved persons convicted of certain crimes and thereafter labeled as at risk of committing future crimes. Rather than requiring a case-by-case decision about each individual, the Supreme Court upheld a statutory presumption that bundled all individuals who had been convicted of certain crimes and placed them in a single category – with their names up on a website. Similarly, in sentencing, the trend is toward aggregate, grid-based guidelines, rather than individual decision making. Let me be clear: I am for guidelines and norms and review, but I do not believe it is wise to reduce the decision about the length of time a person spends in prison to a formula. So a real threat that I see – coming from within the branches of government and from outsiders – is a threat to the belief in the activity of judging itself.

Here is why having enough judges makes a difference. Here is why the non-Article III judges today are so important, for they make tens of hundreds of decisions in individual cases, involving immigration, benefits, social security, and the like. We must pay attention to these judges and find ways to give them the cultural, political, and judicial “capital” to make their decisions wisely and transparently. We need to find ways to have them work in rooms accessi-

ble to the public, to report decisions in a way that makes them known to the public, and to bring them into public discussions of the federal judiciary. These are people making central judgments for so many in the United States, so many holders of federal rights, and they work relatively invisibly.

**Boggs:** That's obviously a very broad topic, and Professor Resnik has given a very broad answer. I think, in a sense, it comes back to the notion of the functions with which we want to endow the judiciary. As a broad proposition, I don't think that the term “judicial independence” speaks to the breadth of matters that we want the federal judiciary to handle. There are arguments about the judiciary's role in such areas as expanding criminalization or contracting economic regulation, but by and large, these are matters that Congress decides.

Professor Resnik spoke about the toleration of aggregate decision making. I would note that legislation is an aggregate judgment. For example, if we say that a person in Minnesota has to have the same air conditioner as a person in Mississippi, which some energy regulation does, that's an aggregate judgment. You may think it's stupid, but it's still a piece of legislation, and unless somebody declares it unconstitutional, you abide by it.

In terms of the broad activity she attributed to all the non-Article III judges, I think one of the real questions – keeping in mind that Congress established the Administrative Procedures Act – is the extent to which something really is an Article I function. Many administrative law judges, in the end, are speaking in the name of a cabinet secretary. Congress can limit some activity to the secretary, or Congress can permit, or even require, that other officials handle it. While it might have been nice for those people to be called judges (so magistrates became magistrate judges, and hearing officers became administrative law judges), it was basically a political judgment under the structure that Congress set up. I can preach that either way without saying that it disturbs the functions with which we want to endow the judiciary. Some members of Congress may want the judiciary to handle certain matters, and others may not.



Jesse Choper



Robert C. Post



Linda Greenhouse



Nelson W. Polsby

**Post:** The distinction that Congressman Berman made between the administration of the judiciary and the functioning of the judiciary calls to mind a memorandum that Chief Justice William Howard Taft wrote to President Coolidge in 1927. There was at the time a bill pending before the House that would have prohibited federal judges from commenting to the jury on the judge's understanding of the evidence. In his memorandum, Taft said this bill would be unconstitutional because it would infringe on the independence of the judiciary. Now, quite apart from whether the bill was in fact constitutional or not constitutional, Taft's argument does require us to think a little bit about the distinction between the prerequisites of independent judgment and the administration of the judiciary.

**Howard Berman:** It seems to me that part of this is about the judiciary's ability to make discrete decisions – not that we are not interfering with, or retaliating for, the exercise of that function. That does seem to be at the heart of it. I was thinking of your question in the context of a recent letter – I could be wrong, but I believe there's a recent letter from the Chief Justice, or maybe it's from the Judicial Conference as a whole, that essentially challenges the wisdom of passing class-action legislation that would essentially federalize huge amounts of class-action cases, because of the consequences of the workload increase on the federal judiciary. I love that letter. I'm going to find that letter, and, when we mark up that bill, I want to use that letter in my debate.

I'm also thinking, what if I were sitting in Congress in 1938, considering a bill that would take what's essentially a contract issue – a labor agreement between a union and an employer – and federalize it, so that our appellate courts would have to hear appeals from this administrative agency all the time. That would really burden our appellate courts. I might have had a different attitude in 1938 than I would today; we view these things differently now.

I'd also like to comment on the notion of an administrative officer speaking for a cabinet secretary. We're finding that there are a lot of legislative initiatives to try and cut the courts out of almost any kind of review of fundamen-

tal decisions about rights – I see it in the area of asylum litigation, for example. Instead of allowing for a sensible administrative process with some level of judicial review, with tilts to the decision of the administrative agency, these initiatives would deprive the courts of any power to act on things that I think are ultimately judicial questions.

**Resnik:** The exchange between the Congress and the Judicial Conference about whether to federalize certain class actions currently litigated in state courts – raised just now by Congressman Berman – points to an important question about what role the Judicial Conference ought to take when asked to comment on proposed legislation. At times, in its history, the Conference has taken the position that it ought not to comment on certain matters of “legislative policy.” At other points, the Conference has noted that a particular proposal would likely increase judicial workload, but then not said more. And at other times, the Conference has registered its opposition to a specific proposal. Several questions emerge. First, if the Judicial Conference is to comment, how should it decide how to formulate its views? Currently it relies on a committee structure, but it does not seek the views of all of the judges before forwarding opinions to Congress. Second, ought the Judicial Conference provide a singular view or forward a range of responses on the pros and cons of a proposal? Third, how might we think about what meaning to make of a comment such as the Judicial Conference is “for” or “against” federalizing certain class actions? Should some collective assessment by life-tenured judges about either opening or closing the federal courts to more cases be encouraged? As these questions suggest, as the judiciary gains its corporate voice, serious questions result about how, why, and when to use it. I am concerned about the harm to the judiciary if it becomes too involved in assessing the wisdom of legislative proposals. Note that many alternatives exist to the request for an opinion from the Conference as a whole. For example, one could invite judges to comment when their expertise would be helpful without positing those judges as “speaking for” the Article III judiciary as a whole.

**Mikva:** In response to Jesse Choper's earlier question regarding the relationship between independence and compensation: One point that didn't come up, but that I think needs to be raised, is that the implicit bargain in the life-tenure provision of Article III should be thought of as two-way; that is to say, the judge will stay a judge. As a litigant, I would not want to appear before a judge who might not be a judge next year, or who might be a practicing lawyer or have some other ambition that could color his or her judgment. That, I think, very much undermines the value of an independent judiciary. Also, I'll note that it's conventional, in this debate about compensation, to look at departure rates, at the numbers of people leaving the bench – not retiring, but leaving to do something else – sometimes something unrelated, but usually the practice of law. The numbers are inherently small, but they've been larger in the past ten or fifteen years than they have been historically – and that, it seems to me, is a reason for concern.

**Linda Greenhouse:** I think that if you asked most judges for their personal thoughts on the question of judicial independence, their responses would touch on two current controversies. One concerns sentencing guidelines, or sentencing discretion, which has been alluded to, although I'd like to hear Judge Boggs comment on that issue. The other controversy centers on a bill that I believe came to the legislative floor in the last session of Congress. I don't think anything's happening with it right now; maybe it was shot down. The bill, sponsored by Senators Kerry and Feingold, sought to limit the ability of judges to attend various kinds of seminars in educational venues, in response to certain specific situations. Many judges to whom I spoke thought this was an intolerable infringement on judicial independence, and I'd like to hear comments about how that fits under the rubric of our discussion today.

**Boggs:** The first issue you mentioned was that of sentencing guidelines. I have not served as a district judge, so I don't have the visceral feeling for the sentencing process that some judges do. I know that the whole process of having guidelines that are appealable greatly increased our workload for a long time, but ultimately we seem to have coped with it – and since I haven't seen any cases under the new statute, I certainly wouldn't want to opine about it. It's something that I'll have to deal with as it comes up.

With respect to the Kerry-Feingold bill, there was some local controversy over it. My personal take on that bill was that it was so con-

trary to the notion we should have of evenhandedness. That is, most of the legislation flatly said, “Law schools, good; bar associations, good; everybody else, bad.”

I’m getting expenses to come to this Stated Meeting. It’s really wonderful, because my wife works in Washington, and it’s much more of a perk for me to come up and see her than to go off to, say, South Dakota. Does this mean that any legislation that’s enacted should list the Academy as one of the groups that’s capable of suborning judges? Of course, law schools constitute the only group that really can provide patronage to judges. Law schools can pay us up to \$25,000 a year to teach, and they can decide whether we teach one hour a week or ten hours a week for our \$25,000, and those law schools litigate, in their own name, in front of us.

I could tell you some evenhanded things that could be enacted: for example, you could limit all compensation to the federal per diem rate, and that would get rid of the notion of plush expenses. I don’t think I’ve ever had a conference expense that didn’t come in under the federal per diem rate. But that would be evenhanded. A bill that would set up a commission to approve what judges can and can’t go to would be problematic – but I haven’t seen that legislation go very far.

**Berman:** As one of the people who have strong views about the rules that ought to control judges attending those conferences, I’m strongly opposed to any legislation in the field. I think this is something that the Judicial Conference can handle, taking into account the problems that Judge Boggs just noted.

**Mikva:** What about disclosure?

**Berman:** There certainly should be disclosure, but I don’t think that’s a problem.

**Mikva:** Some people don’t like disclosure, though.

**Resnik:** There’s been a real problem with disclosure, and the issue came up because some repeat-player litigants with great resources can put on conferences for judges. These are not just mixed-audience conferences at which judges are invited to speak, but conferences at which judges are asked to teach law and economics, or antitrust law, or civil rights law. As it turns out, the civil rights folks are not too well heeled, and the people with other resources are more well heeled – and, over a period of decades, they have made an energetic, focused project of inviting both state and federal judges to teach particular areas of law. I think the congressional response, essentially, is to view that as improper.

**Nelson W. Polsby:** This has been an eye-opener for me. Let me simply sing you an old song, and you can tell me whether this is wrong. The old song goes this way: “It’s congressional salaries that stink, and there’s no way to raise them unless you can piggyback on the independence of the judiciary and the senior civil service.” Therefore, judicial pay is the choo-choo train that’s pulling senior civil service and congressional salaries in its wake. Has that political dynamic completely changed?

**Boggs:** I think it goes both ways. I think different branches rise in public favor at different times, or at least they think so. I think judges believe that Congress believes that the judiciary and Congress need to be tied together, or else Congress would never get a raise. I think that view was stronger in times when we

thought the public’s perception of Congress was lower. During an era when judges are being heavily attacked from one side or another, that same linkage may not apply. I think it’s prudential and experiential, not fundamental.

**Berman:** There’s another function that wasn’t stated initially in the discussion – one that, I think, is never stated but exists: the envy aroused by the notion that judges should make more money than members of Congress. I think that’s nuts – not for judicial independence reasons, but for reasons of quality and diversity in the judiciary – but there’s always an element that wants constantly to tie congressional and judicial pay together. I don’t know who’s pulling whom right now, but in the past three or four terms, we have steeled ourselves and not denied ourselves the automatic pay increase, and this year we granted the judicial Cost of Living Adjustments – although I think that the section requiring us to do it every year is pointless if we’re not even doing it for ourselves. ■

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The remarks of Judith Resnik and the charts by Judith Resnik are based on a series of essays, including “Trial as Error, Jurisdiction as Injury: Transforming the Meaning of Article III,” *Harvard Law Review* 113 (2000): 924; “Uncle Sam Modernizes His Justice: Inventing the District Courts,” *Georgetown Law Journal* 90 (2001): 607; and “Constricting Remedies: The Rehnquist Judiciary, Congress, and Federal Power,” *Indiana Law Journal* 78 (2003): 223.



Supreme Court Justices Ruth Bader Ginsburg and David Souter, Librarian of Congress James Billington, and Director of Scholarly Programs at the Library of Congress Prosser Gifford



Academy President Patricia Meyer Spacks (University of Virginia) and Richard Meserve (Carnegie Institution)

# Project Update

## National Security: Impediment to Space Sciences?

Recently announced plans for completing the International Space Station, launching a manned mission to Mars, and generally setting “a new course for America’s space program” will require extensive international cooperation. Yet such cooperation is now being significantly impeded by federal government regulation of the space sciences, according to Academy Fellow Eugene Skolnikoff.



Eugene Skolnikoff

Skolnikoff is Professor Emeritus of Political Science at MIT and an expert on science and public policy, with particular attention to the relationship between science and technology and international security. In a number of articles and addresses over the past few years, he has been warning of the grave dangers to space-related scientific research posed by a set of federal rules called the International Traffic in Arms Regulations (ITAR). Although intended to keep research and technology with potential military or terrorist uses out of the wrong hands, what the ITAR may end up doing instead, according to Skolnikoff, is handcuffing American science and industry and actually undermining U.S. national security.

Several worrisome restrictions on academic freedom and scientific openness and exchange have come to bear since the terrorist attacks on the United States, though problems with the ITAR actually pre-date 9/11. Skolnikoff traces the origins of the current threat back to 1999, when Congress transferred responsibility for licensing the export of U.S.-manufactured commercial satellites from the Commerce Department’s Bureau of Export Administration to the State Department, which administers

the ITAR. Another significant change made in 1999 was the addition of scientific satellites to the U.S. Munitions List of items requiring an export license under the ITAR.

An even more comprehensive problem became apparent as university researchers began to realize that routine exchanges of information between American scientists and some of their foreign colleagues and students – even if the information involved was unclassified or had long been in the public domain – now required a license, with the threat of criminal penalties for those who violated the rules.

According to Skolnikoff, the current ITAR regime has adversely affected the space sciences: There are delays in proposed projects; “virulent” complaints from foreign researchers, many of whom have decided not to collaborate with Americans; short-circuited discussions at international scientific meetings; questions about

## New International Security Issues in the Post-Soviet Region

On November 22, 2003, Eduard Shevardnadze resigned as president of Georgia as thousands of anti-government protesters filled the streets, surrounding the presidential compound. The so-called Rose Revolution was another in a series of rapid and problematic transitions in the post-Soviet territories.

The regional and international reverberations of conflict in or over the borderlands of the former Soviet Union are a common focus of an Academy study on International Security in the Post-Soviet Space. A series of volumes will emerge from the project, sponsored by the Academy’s Committee on International Security Studies (CISS).

The most recent volume in the series is *Swords and Sustenance: The Economics of Security in Belarus and Ukraine*, edited by Robert Legvold (Columbia University) and Celeste Wallander (Center for Strategic and International Studies). The book examines the fashioning of security policy under conditions of market transition and dependence. Previously published was *Thinking Strategically: Kazakhstan, the Major Powers, and the Central Asian Nexus*, edited by Legvold, which illuminates the contrasting strategies of China, Japan, Russia, the E.U., and the United States toward Central Asia. Forthcoming in the series is a volume, edited by Legvold and Bruno Coppieters (Free University, Brussels), that will discuss the sometimes violent process of state building in Georgia, and the effort of Georgian and other leaders to fashion national and mutual security policies in the Caucasus region. Also forthcoming is a book, edited by Steven Miller (Harvard Univer-



sity) and Dmitri Trenin (Carnegie Moscow Center), that will focus on the politics and policy of Russian defense. It will offer an assessment of the Russian military that now exists and of the further reforms that could (and, many believe, should) shape the future of Russian military power.

The MIT Press is publishing the books as part of the American Academy Studies in Global Security series. To order copies, call The MIT Press at 800-405-1619 or visit <http://mitpress.mit.edu>.

The Academy is deeply indebted to the Carnegie Corporation of New York for its support of these studies. ■

Continued on page 34

the participation of foreign graduate students in research projects in American institutions; delay or cancellation of projects involving collaboration between universities and foreign or multinational corporations; and “compromised” relations between certain universities and NASA. These kinds of obstacles to free and open scientific exchange pose a threat to what Skolnikoff calls the “fundamental values” of America’s research institutions. “It is imperative that the nation’s research institutions continue to defend the openness and the freedom to exchange information which are so important to maintaining our scientific and technological leadership.”

Nor is it just America’s scientific community that is in jeopardy. As Skolnikoff and other Fellows involved with the Academy’s Rules of Space project learned at a recent workshop in Houston (see accompanying story), the American commercial space industry has already been seriously harmed by the restrictions imposed by the ITAR.

Far from downplaying the threats that the ITAR is intended to counter, Skolnikoff agrees that the dangers are real. Yet the irony behind the current rules, he points out, is that they may end up weakening U.S. national security by undermining American technological capacity and international leadership. Hence the importance of the Academy’s Rules of Space project, which is examining the politics and potential of greater international cooperation in the development of space. “I don’t know yet what an ideal international regime in space would look like,” Skolnikoff concludes. “That’s why I’m taking part in this project – to find out.” ■

## Reconsidering the Rules of Space

In the effort to return to the moon, “The most important ‘how’ question,” according to Academy Fellow Neal Lane (Rice University), “is the extent to which this will be an international effort.” Testifying before the Senate Committee on Commerce, Science, and Transportation in January 2004, Lane observed that “there is also reason for other nations to question U.S. policy on the future use of space, given statements made by high-level U.S. government leaders and in military strategy documents about the need to prepare for increased military activities in space.”

To promote discussion of alternative policies, the Academy’s Committee on International Security Studies (CISS) has been engaged in a multi-year project on “Reconsidering the Rules of Space.”

“The participants in our study believe that the American public needs to be more engaged in determining what our balance of in-



David Wright and Laura Grego (both, Union for Concerned Scientists) discuss their paper at a meeting held at the House of the Academy.

terests should be, and what kinds of international rules should be negotiated to protect the full range of our interests, both military and non-military,” says project leader and CISS cochair John Steinbruner (University of Maryland). He notes that stated U.S. plans to deploy space-based weapons are inherently objectionable to most other countries and exceedingly unlikely to command international consent. By bringing together various constituencies (commercial, scientific, and governmental) with a direct interest in U.S. space policy,

the Committee on International Security Studies hopes to get the necessary dialogue under way.

The project convened two workshops in fall 2003. The first, held at Rice University with the help of Neal Lane and George Abbey (former director of the Johnson Space Center), focused on the implications of U.S. space and defense policies for the commercial space industry. The second, held at the House of the Academy, reviewed technical aspects of securing space assets. Publications from these workshops are planned for the spring and summer of 2004. In addition, the project has commissioned papers on Chinese perspectives on U.S. space plans and on Russian space policy. It is also organizing a working group to study rules of international cooperation in space.

In his testimony, Lane urged members of Congress and the administration to consider the Academy’s forthcoming work on space policy as they go forward with plans for refocusing NASA’s future mission.

The Academy’s Committee on International Security Studies plans and sponsors research on current and emerging challenges to global peace and security. For more background on “Reconsidering the Rules of Space,” see “Progress Reports on Academy Projects” in the Winter 2003 issue of the *Bulletin*.

The Carnegie Corporation of New York has generously provided support for this project. ■



Some of the participants at the workshop held at Rice University: top row, left to right: Magued Iskander (MD Robotics), Karl Doetsch (International Space University), Martin Malin (American Academy), Roald Sagdeev (University of Maryland), Randy Brinkley (J. F. Lehman and Company), Eugene Skolnikoff (MIT), Neal Lane (Rice University), Darlene Freeman (SES Global Sourcing), George Abbey (Rice University); bottom row: Nancy Gallagher (University of Maryland), John Steinbruner (University of Maryland), Richard Garwin (Council on Foreign Relations), Patricia McFate (Science Applications International Corporation)

## Moynihan Tribute

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which one ethnic group dominated many others. Even though conflicts among them were suppressed by the totalitarian regime and were not evident, they were there. When the Soviet Union broke up Moynihan was virtually alone among the public figures who had pointed to the fault lines of divisiveness and the potential weakness represented by the dominance of one group over many. Certainly his work on ethnicity, beginning with our book on New York City and extending to ethnic conflict around the world in the Academy project of the 1970s, sensitized him to this issue.

I have given a somewhat parochial picture of the work and mind of Daniel P. Moynihan in concentrating on his connections with the Academy. There were so many other issues on which he played key and historic roles: the reform of welfare, the shoring up of social security, the improvement of the design of federal buildings, the creation of new institutions of research in public affairs. He was a unique figure in American intellectual and political life. It was said of him that he had written more books than many members of the Senate had read. His work as a senator for twenty-four years – and there are no sabbaticals in the Senate – meant that the writing of books was limited to his summers, and some were inevitably sketchy and brief. But when one considers his last few books one sees immediately how his mind was naturally drawn to and encompassed the kind of issue that the Academy is best at addressing: one that for its better understanding inherently requires bringing together people from many disciplines and from many worlds.

In his last books, he demonstrated his continued remarkable ability to seize on key issues whose significance would only become greater in time. In 1990, Moynihan

## The House of the Academy: An Ideal Location for Meetings and Social Events

Conveniently located in the heart of Cambridge on a secluded five-and-a-half acre wooded estate, the House of the Academy is available to Fellows and their friends and families for meetings, receptions, business and personal social events. An elegant retreat within the city, the House is ideal as an intimate meeting place for small groups, or for larger celebrations of up to 400 guests.

The facilities at the House include executive conference rooms; a 250-seat auditorium; reception atrium and hearth; three separate dining rooms; and high-quality audiovisual/communication systems. The expert catering staff will help you plan a menu to suit the needs of your group.

For more information or to book the House for your next event, please contact the General Manager of Norton's Woods (telephone: 617-576-5030; email: [events@amacad.org](mailto:events@amacad.org)). ■



published with Harvard University Press *On the Law of Nations*, a defense of the possibilities and prospects of international law. Moynihan was concerned with certain cavalier actions of the Reagan administration, which had pushed against and beyond the fragile restraints of international law. Compared to what we have recently seen, the issue then was no larger than a man's hand, but it is now a very large cloud indeed. In 1993 Moynihan published *Pandaemonium: Ethnicity in International Affairs* with Oxford University Press. As we look at Iraq and Israel and Palestine today – not to mention the Caucasus, the Congo, Sri Lanka, and on and on – the issues to which Moynihan drew attention then have only become larger.

In 1997 Moynihan conducted Senate hearings on the scope of secrecy in the government. Yale University Press published his last book, *Secrecy: The American Experience*, in 1998. The hearings and book dealt with an issue that can only be of ever increasing concern. What should a democratic government keep secret from the people? And with what consequences? Moynihan was troubled by the enormous expansion of the number and size of our security agencies entitled to stamp their work "secret." This "secret" category of government documents is of unimaginable quantity and range. How does all this shape policy, and can it be good policy when so much is withheld from the people, from actors in government, per-

haps up to and including the President? Moynihan raised these questions; how prescient they are today.

Moynihan was one of our great public servants. But he was also, as we look at his relations to the Academy and to the kinds of issues he brought to public attention, the ideal member of our Academy. And so we of the American Academy of Arts and Sciences must note with sadness his passing, and record our appreciation of the gifts of insight and understanding he brought to us. ■

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# Around the Country

## University of California, Irvine

Western Center cochair Walter Fitch (UC Irvine) organized an Understated Meeting of Fellows at UC Irvine on October 7, 2003. Safi Qureshey, managing partner of Skyline Capitol Partners and member of the Dean's Board of Directors, UC Irvine Graduate School of Management, led an informal conversation on political stability in the Middle East and Far East. As a long-term advisor to the government of Pakistan, Qureshey also discussed the political and economic situation in

that country, emphasizing the need to develop strategies to address such issues as unemployment, inflation, management of water resources, and the advancement of educational opportunities.

**Clockwise: Academy staff Roberta Peterson and Jean Keating, David Easton (UC Irvine), Paul Silverman (Irvine, Calif.), William Daughaday (UC Irvine), Jack Peltason (UC Irvine), Safi Qureshey (Skyline Capitol Partners), Walter Fitch (UC Irvine), Elizabeth Loftus (UC Irvine), and Francisco Ayala (UC Irvine). Not shown: R. Duncan Luce, Masayasu Nomura, A. Kimball Romney, and Brian Skyrms (all, UC Irvine)**



## Los Angeles County Museum of Art

The Western Center held a Stated Meeting on September 13, 2003, at the Los Angeles County Museum of Art (LACMA), in conjunction with the exhibition "Old Masters, Impressionists, and Moderns: French Masterworks from the State Pushkin Museum, Moscow." Academy Fellow Stephanie Barron, senior curator of modern and contemporary art and vice president of education and public programs at LACMA, presented a brief history of the Pushkin Museum from its founding in the late nineteenth century to the present day, and commented on paintings in the exhibition by Degas, Van Gogh, Cezanne, Braque, and Matisse. Fellow Thomas Crow, professor of art history at the University of Southern California and director of the Getty Research Institute at the Getty Center in Los Angeles, spoke on "Collecting and Display as Subjects of History." His talk focused on the influence of Catherine the Great on the eighteenth-century French painter Jean-Baptiste Greuze, and on the impact of early-twentieth-century collectors Sergei Shchukin and Ivan Morozov on Russian art, just prior to the Russian Revolution.



**Speakers Stephanie Barron and Thomas Crow**



**New member Donald Glaser (UC Berkeley), Lynn Glaser, and new member Vincent Crawford (UC San Diego)**



**Edward Feigenbaum (Stanford University) and Penny Nii**

## Adler Planetarium, Chicago

Vice President for the Midwest Center Martin Dworkin (University of Minnesota) welcomed Fellows and guests to the Adler Planetarium in Chicago for the Center's fall Stated Meeting and dinner. The speaker was noted astrophysicist Michael S. Turner, Raumer Distinguished Professor at the University of Chicago and Assistant Director for Mathematical and Physical Sciences at the National Science Foundation. In a richly illustrated presentation,

Turner described the recent revolution in cosmology, resulting from the interaction of technological advances and scientific ideas. He focused on the theories and instruments that have produced greater understanding of the "inflation" of the universe and of the slowly moving particles, known as Cold Dark Matter, that are purported to hold the universe together. As Turner observed, "It's hard to argue with those who call this the Golden Age of cosmology."



Speaker Michael S. Turner



New Fellows Rochelle Esposito and Donald Lamb (both, University of Chicago)

## Rice University

President of Rice University Malcolm Gillis hosted an on-campus reception for Academy Fellows in fall 2003. Academy President Patricia Meyer Spacks attended the reception, where participants engaged in a general discussion of teaching and research in American

universities, with particular emphasis on the need for greater interdisciplinary perspectives in the curricula of academic departments and professional schools. The Academy is grateful to Fellow James Kinsey for planning the event.



James Kinsey



Malcolm Gillis

## National Humanities Center

Last fall, the National Humanities Center hosted an Academy Stated Meeting in Research Triangle Park, N.C. Edward Perl, the Sarah Graham Kenan Professor of Cell and Molecular Biology at the University of North Carolina at Chapel Hill, welcomed members and guests, including Academy President Patricia Meyer Spacks and Executive Officer Leslie Berlowitz. John Hope Franklin, James B. Duke Professor Emeritus of History at Duke University, introduced Walter E. Dellinger, III, who

spoke on "The Supreme Court and American Democracy 2004." Dellinger is the Douglas B. Maggs Professor of Law at Duke University. The National Humanities Center, nearing its 25th anniversary, was founded by the Academy in corporation with Duke University, the University of North Carolina, and North Carolina State University. At the reception that followed, Geoffrey Harpham, president and director of the National Humanities Center, greeted the attendees.



John Hope Franklin, Walter E. Dellinger, III, President of the Academy Patricia Meyer Spacks, and Edward Perl



# In My Opinion

## Values and Corporate Responsibility: A Personal Perspective by John S. Reed

All is not well in Corporate America. Of greatest concern is the seemingly broad-based breakdown of values and responsibilities highlighted by Enron, WorldCom, Arthur Andersen, the Wall Street “settlement,” and so forth. What happened? Why? What is to be done about it? These are among the urgent questions being posed by an ongoing study of corporate responsibility at the American Academy of Arts and Sciences.

*What happened* seems to be clear. Too many examples of extreme corporate behavior, and the complicating complacency of presumed professionals – directors, auditors, lawyers, and bankers – have severely harmed the trust and confidence essential to free market capitalism.

*Why this happened* is, of course, less clear. Surely incentives were wrong and checks and balances failed to work. The seeds of these problems probably date back to the 1980s, when Corporate America was seen as “stodgy,” a “club” uninterested in financial performance, stockholders or product quality, and a “loser” to new international competition – particularly from Japan. This changed. In remarkable ways, investors became the dominant and aggressive feared force. Cynics would say that the balance and judgment expected of management was “bought off” by large stock-based compensation awards with very short-term payoff and limitless bonus payments. The mantra of stockholder value was enshrined in companies, boardrooms, analyst reports, and the business press. Analysts became all-important and stock price became the measure of performance and self-worth (psychologically and literally!). Too often, integrity and responsibility were crowded out by share-

holder value and the cult of the super-highly paid CEO.

What is to be done? At one level the problem is a straightforward question of values. Companies are expected to be honest and report results as they are. Auditors, lawyers, and bankers are expected to maintain the values derived from their professions. Investment bankers are also expected to be professionals, and analysts to be critical thinkers providing the best possible advice to prospective owners of securities. Regulators and boards are expected to be sources of balance and judgment. Individuals are expected to stand up and be independent of “go along” norms.

The cult of short-term stockholder value has been corrupting. Investors clamoring for performance and share price increases, coupled with unrestrained compensation linked to short-term stock prices, has been demonstrated to be a flawed structure. Similarly, the link between investment banking and retail distribution, without an overarching management structure that is responsible, visible, and accountable, has proven to be flawed. So too has been the role of boards and the functioning of auditors.

So, at a more profound level, what is to be done? I have a few thoughts:

1. Management needs a more wholesome objective than shareholder value. I suggest *evolutionary success*.
2. Boards need to accept and be held accountable for new responsibilities, particularly management values and behaviors, and the impact of incentives.
3. Structural risks must be offset by clear responsibilities and rules. Those who choose to link investment banking, retail analysis, and distribution must be held to a high standard of performance.
4. Auditors and lawyers must be held to be professionals first and foremost. Their expanded activities that raise issues of conflict should be avoided. We can afford to pay the cost of professionalism.
5. The final challenge is to surround the enterprise with a self-evaluating and self-correcting process to ensure continuity across time.

### Management Objective

My own view is that management’s objective should not be “shareholder value,” which, at least in its current manifestation, is too simplistic, but rather *evolutionary success*. Evolution, a dynamic concept, recognizes the reality of continuous change and adaptation. It incorporates the notion of the environment – customers, competitors, regulators



John S. Reed

alike – in defining the determinants of success. It embraces share price (or cost of capital) as a key success factor, but not to the exclusion of others.

A “Report Card” dealing with evolutionary success would be broader and more textured than one limited to shareholder value. It would bring with it more healthy discussion within managements, with the board and with the external community. The concept also embeds a more relevant time frame in all these considerations. If well implemented, it would be hard to distort – a problem that turned out to be fatal to shareholder value. (How many boards have said “Earnings are good, share price is up; all must be well,” only to find that they were wrong?)

### Board Responsibility

One of the most striking features of this history is the failure of boards. Shareholders pressure boards to deliver “results”; yet they fail to appreciate the cost of corrupting the role of these bodies. We must rely on the board to be

the guarantor of values, balance, judgment, and accountability.

We have to look to individual board members, board organization and function, the nature of board discussion, and the board's accountability. Board members must be sophisticated and competent, and cannot be socially or financially beholden to management. Boards must be organized to do their jobs. While it is not vital to distinguish between a Chairperson and a CEO, it is vital to recognize that these are two different functions. If a board is to "do its job," the job must be defined. Boards must:

1. know management's plans and be routinely apprised of progress and problems relating to them;
2. understand and be comfortable with the company's strategy and its key underlying assumptions, and understand the strategies of the company's competitors;
3. understand and be comfortable with the business risks and social expectations for the firm, including control and accounting issues; and

4. know the management and be routinely apprised of development and succession plans.

The board must routinely meet in executive session, as well as alone with the CEO; discuss and criticize its own functioning from time to time; and specifically discuss, and be satisfied with, the values and working environment surrounding the senior team, being particularly mindful of the potential problems stemming from compensation and reward practices. Finally, the board should be able to demonstrate to a reasonable degree that it has understood and fulfilled these responsibilities. Errors will be made, but they should not be errors of omission.

### Structural Risks

Origination and distribution, particularly at the retail level, need not be linked in investment banks. Yet they often are, creating the potential for conflict. Those who choose to operate in this way should be required to certify that the CEO and other senior management have responsibility for maintaining appropriate separations; and that failures to prop-

erly supervise be treated as (a) *personal* and (b) *criminal*, as is currently our practice with price fixing.

### Auditors, Lawyers, and Professionals

Over the last forty years, there has been a gradual but continual movement away from standards and values toward processes and procedures. Where we used to look to accountants to help us properly account for a transaction, we now look to them to verify that it "complies with GAAP." There is a big difference. The same is true with the law, moving from "Is it right?" to "Can it be defended?" What used to be part of an immune system has become too close to being part of operating management. There are many explanations for this change and the relationship cannot be legislated to return to a world that was probably never perfect. However, the value and need for true professionalism must be reaffirmed.

More broadly, Corporate America must reaffirm a commitment to basic values if our system of capitalism is to regain the public's trust. ■

John S. Reed, a Fellow of the Academy since 1998, is the interim chairman of the New York Stock Exchange. This paper, written prior to his joining the NYSE, was prepared for the Academy's study on corporate responsibility and will be included in a forthcoming Occasional Paper: "Beyond Regulation: Corporate Responsibility in America." Mr. Reed currently serves as Treasurer of the American Academy.

### NEH Grant continued from page 1

(a study of the varied roles played by white and black women in the history of lynching in the American South). "I've got two years before I come up for tenure, and this is giving me a year to actually bang out the book," she explains. "I feel really lucky that the Academy has given me a place to work, as well as a community of schol-

ars with whom I can discuss my field, my work, and the process of writing."

The current group of Visiting Scholars represents the fields of American literature, American history, African American studies, law, political science, and international relations, with research topics ranging from race and ethnicity in America to refugee repatriation after civil war.

In addition to helping advance the VSP, the NEH grant will help fund Academy efforts to extend knowledge and appreciation of the humanities in America through symposia, lectures, and other means of public education and outreach. These programs will complement the Academy's ongoing Humanities Indicators database project and its preparation of a two-volume study, which maps the

history of, and trends within, the humanities in America over the last one hundred years. ■

# Nominating Committee Report

AMERICAN ACADEMY  
OF ARTS & SCIENCES

Dear Fellows:

As Secretary of the Academy, I submit the following list of nominees for election as Councilors and Members of the Membership and Nominating Committees. Candidates for the Nominating Committee are recommended by the Council; all other candidates are recommended by the Nominating Committee.

Additional candidates for any of these positions may be proposed by written petition from the membership. A valid petition must be signed by twenty-five Fellows of the Academy, representing at least four institutions from different geographical areas. If you submit such a petition to the Academy by April 12, the name(s) of your candidate(s) will appear on the final ballot and, in the case of Councilors, will be accompanied by a brief biography, which must be provided by the petitioners. In proposing a nominee, please make sure that your candidate is willing to stand for election and to serve if elected.

The ballot requesting your vote will be sent by first-class mail in early April.

If you have any questions about the submission of a proposal, please contact Leslie C. Berlowitz, Executive Officer (617-576-5010).

I want to thank the Chair of the Nominating Committee, Denis Donoghue, and the members of the committee for their efforts on our behalf.

Emilio Bizzi  
Secretary  
March 2004



## Nominating Committee Candidates Proposed for Open Positions in 2004

The preliminary list is for purposes of notification only. The ballot requesting your vote will be mailed to you in early April.

### COMMITTEE ON MEMBERSHIP (to serve for three years)

#### Class I – Mathematical and Physical Sciences

Chair,  
**William Happer**, Section 2  
*Princeton University*

**Srinivasa Varadhan**, Section 1  
*New York University*

**Douglas Lauffenburger**, Section 5  
*Massachusetts Institute of Technology*

#### Class II – Biological Sciences

**Gordon N. Gill**, Section 5  
*University of California, San Diego*

#### Class III – Social Sciences

**Joyce Marcus**, Section 1  
*University of Michigan*

#### Class IV – Humanities and Arts

Chair,  
**Philip Khoury**, Section 2  
*Massachusetts Institute of Technology*

**Stephen Toulmin**, Section 1  
*University of Southern California*

**Rachel Hadas**, Section 4  
*Rutgers University*

**Kay Kaufman Shelemey**,  
Section 5 (Music)  
*Harvard University*

**John Walsh**, Section 5 (Art)  
*Yale University*

### COUNCILORS (to serve for four years)

#### Class II – Biological Sciences

**Randy Schekman**, Section 2 – Cellular and Developmental Biology, Microbiology, and Immunology  
*University of California, Berkeley*

**Gerald Fischbach**, Section 3 – Neurosciences, Cognitive Sciences, and Behavioral Biology  
*Columbia University*

#### Class V – Public Affairs, Business, and Administration

**Linda Greenhouse**, Section 1 – Public Affairs, Journalism, and Communications  
*New York Times*

**Richard Meserve**, Section 1 – Public Affairs, Journalism, and Communications  
*Carnegie Institution of Washington*

**Neal Lane**, Section 3 – Educational, Scientific, Cultural, and Philanthropic Administration  
*Rice University*

### NOMINATING COMMITTEE (to serve for three years)

#### Class I – Mathematical and Physical Sciences

**Eugene Wong**  
*University of California, Berkeley*

#### Class III – Social Sciences

**John Steinbruner**  
*University of Maryland*

In 1780 the Academy was chartered as a forum “to cultivate every art and science which may tend to advance the interest, honour, dignity, and happiness of a free, independent, and virtuous people.” *Dædalus*, the Journal of the American Academy of Arts and Sciences, will explore the theme of happiness from a variety of perspectives in its Spring 2004 issue. Excerpts from three essays follow:

Each of us has only a fixed amount of time available for family life, health activities, and work. Do we distribute our time in the way that maximizes our happiness? The answer, I believe, is no, for a reason that has already been suggested: we decide how to use our time based on the false belief that more money will make us happier. Because of this ‘money illusion,’ we allocate an excessive amount of time to monetary goals, and shortchange non-pecuniary ends such as family life and health . . . . Could we make our lives happier? The tentative answer, based on the evidence at hand, I suggest, is this: Most people could increase their happiness by devoting less time to making money, and more time to nonpecuniary goals such as family life and health.

– Richard A. Easterlin on “The economics of happiness”

If we try to measure the happiness of lives in terms of smiley-face feelings, the results will be grotesque. I have seen a survey that asks people to measure the happiness of their lives by assigning it a face from a spectrum with a very smiley face at one end and a very frowny face at the other. Suppose that you have just won the Nobel Prize; this surely merits the smiliest face. But suppose also that you have just lost your family in a car crash; this surely warrants the frowniest face. So, how happy are you? There is no coherent answer – unless you are supposed to combine these points by picking the indifferent face in the middle!

– Julia Annas on “Happiness as achievement”

Powerful philosophical conceptions conceal, even while they reveal. By shining a strong light on some genuinely important aspects of human life, Jeremy Bentham’s Utilitarianism concealed others. His concern with aggregating the interests of each and every person obscured, for a time, the fact that some issues of justice cannot be well handled through mere summing of the interests of all. His radical abhorrence of suffering and his admirable ambition to bring all sentient beings to a state of well-being and satisfaction obscured, for a time, the fact that well-being and satisfaction might not be all there is to the human good, or even all there is to happiness. Other things – such as activity, loving, fullness of commitment – might also be involved.

– Martha C. Nussbaum on “Mill between Aristotle & Bentham”

## On Happiness

Darrin M. McMahon, “From the happiness of virtue to the virtue of happiness: 400 B.C. – A.D. 1780”

Robert Biswas-Diener, Ed Diener & Maya Tamir, “The psychology of subjective well-being”

Richard A. Easterlin, “The economics of happiness”

Anna Wierzbicka, “‘Happiness’ in cross-linguistic & cross-cultural perspective”

Julia Annas, “Happiness as achievement”

Bernard Reginster, “Happiness as a Faustian bargain”

Martha C. Nussbaum, “Mill between Aristotle & Bentham”

Robert H. Frank, “How not to buy happiness”

Martin E. P. Seligman, “Can happiness be taught?”

### Poetry:

Richard Howard, “On a photograph by Mike Disfarmer”

### Fiction:

Erin McGraw, “Appearance of Scandal”

### Notes:

S. George H. Philander, “El Niño & the uncertain science of global warming”

Linda Hutcheon, “The art of adaptation”



# Noteworthy

## Delegates from the American Academy to:

National Humanities Center

**Alan Brinkley** (Columbia University)

**Denis Donoghue** (NYU)

American Council of Learned Societies

**Bruce Redford** (Boston University)

American Association for the Advancement of Science

**Edward R. Perl** (University of North Carolina at Chapel Hill)

International Institute for Applied Systems Analysis

**Simon Levin** (Princeton University)

## Select Prizes and Awards

Wolf Prizes, 2004

*Chemistry*

**Harry Gray** (California Institute of Technology)

*Medicine*

**Robert Weinberg** (MIT) and **Roger Tsien** (University of California, San Diego)

*Arts-Music*

**Mstislav Rostropovitch** (Washington, D.C.) and **Daniel Barenboim** (Chicago Symphony Orchestra)

**Benoit Mandelbrot** (Yale University) received the 2003 Japan Prize for Science and Technology, awarded by the Science and Technology Foundation of Japan.

**Roger Bagnall** (Columbia University), **Robert Brandom** (University of Pittsburgh), **Anthony Grafton** (Princeton University), and **Christopher Ricks** (Boston University) received the Mellon Distinguished Achievement Award from the Andrew W. Mellon Foundation.

**Timothy Berners-Lee** (MIT) has been made a Knight Commander, Order of the British Empire by Queen Elizabeth II.

**James O. Freedman**, former Academy President (Dartmouth College), received the American Jewish Committee National Distinguished Leadership Award.

**Roeland Nusse** (Stanford University) was honored by *Scientific American* as one of the fifty best research leaders of 2003.

**David Freedberg** (Columbia University) received the Ralph Waldo Emerson Award from the Phi Beta Kappa Society for *The Eye of the Lynx*, published by the University of Chicago Press.

**Andrew H. Knoll** (Harvard University) received the Phi Beta Kappa Book Award in Science for *Life on a Young Planet*, published by Princeton University Press.

**Federico Capasso** (Harvard University) was awarded the 2004 Arthur L. Schawlow Prize in Laser Science by the American Physical Society.

**Seymour Benzer** (California Institute of Technology) received the 2004 Bower Award and Prize for Achievement in Science in the Field of Brain Research from The Franklin Institute.

**Robert Langer**, medical researcher (MIT), **Julius Richmond**, health policy professor (Harvard University), and **August Wilson**, playwright (Seattle) were among the recipients of the Heinz Family Foundation awards, established by Teresa Heinz (Heinz Family Philanthropies).

**Mike Nichols**, director (New York City), and **Itzhak Perlman**, violinist (New York City), were awarded 2003 Kennedy Center Honors.

**R. John Collier** (Harvard Medical School) received the Bristol-Myers Squibb Award for Distinguished Achievement in Infectious Diseases Research.

**Edward Ayers** (University of Virginia) is among the recipients of the 2003 U.S. Professors of the Year award, recognizing dedica-

tion to undergraduate teaching and a commitment to students.

**Harry B. Gray** (California Institute of Technology) received the 2004 Benjamin Franklin Medal in Chemistry from The Franklin Institute.

**Richard M. Karp** (International Computer Science Institute) received the 2004 Benjamin Franklin Medal in Computer and Cognitive Science from The Franklin Institute.

**Timothy Springer** (Harvard Medical School) and **Eugene Butcher** (Stanford University) received the Crafoord Prize of the Royal Swedish Academy of Sciences for their research on white blood cells.

**Steven Levitt** (University of Chicago) has been awarded the John Bates Clark Medal, presented every two years by the American Economic Association to the economist under 40 who has made the greatest contribution to the discipline.

## New Appointments

**David Brady** (Stanford University) has been appointed deputy director at the Hoover Institution.

**Edward M. Scolnick** (Merck Research Laboratories) has been appointed to the Clinical Advisory Board of Elixir Pharmaceuticals, Inc.

**Paul Schimmel** (Scripps Research Institute) has joined the Scientific Advisory Board of Metabolon, Inc.

**Arnold Rampersad** (Stanford University) has been appointed cognizant dean for the humanities at Stanford University.

**Simon Levin** (Princeton University) has been appointed chair of the U.S. Committee for IIASA and of the IIASA Governing Council.

**James Cuno** (Courtauld Institute of Art, London) has been named Director of the Art Institute of Chicago.

**Amy Gutmann** (Princeton University) will succeed **Judith Rodin** as President of the University of Pennsylvania on July 1, 2004.

## Select Publications

Fiction

**Louis Auchincloss** (New York City). *The Scarlet Letters*. Houghton Mifflin Co., November 2003

**James Lehrer** (Public Broadcasting System). *Flying Crows*. Random House, May 2004

**Joyce Carol Oates** (Princeton University). *Rape: A Love Story*. Carroll and Graf, December 2003; *I Am No One You Know*. HarperCollins, April 2004

**Richard Stern** (University of Chicago). *Stitch; Other Men's Daughters*; and *Natural Shocks*. Reissued by Northwestern University Press, Summer 2004. *Almonds to Zooof, the Collected Stories of Richard Stern*. Northwestern University Press, Fall 2004

**Anne Tyler** (Baltimore, Maryland). *The Amateur Marriage*. Knopf, January 2004

**Alice Walker** (Berkeley, California). *Now Is the Time to Open Your Heart*. Random House, April 2004

Poetry

**Paul Auster** (New York City). *Collected Poems*. Overlook Press, January 2004

**Louise Erdrich** (Minneapolis, Minnesota). *Four Souls*. HarperCollins, June 2004

**C. K. Williams** (Princeton University). *The Singing*. Farrar, Straus & Giroux, November 2003

Nonfiction

**Walter Abish** (New York City). *Double Vision: A Self-Portrait*. Knopf, February 2004

**Bruce Ackerman** (Yale University) and **James Fishkin** (Stanford University). *Deliberation Day*. Yale University Press, March 2004

**Jagdish Bhagwati** (Columbia University). *In Defense of Globalization*. Oxford University Press, March 2004

**Alan S. Blinder** (Princeton University). *The Quiet Revolution: Central Banking Goes Modern*. Yale University Press, April 2004

**Zbigniew Brzezinski** (Center for Strategic and International Studies, Washington, D.C.). *The Choice: Domination or Leadership*. Basic Books, March 2004

**James MacGregor Burns** (University of Richmond) and Susan Dunn. *George Washington*, a volume in the American President's Series, edited by **Arthur Schlesinger, Jr.** (New York City). Holt/Times, January 2004

**Robert Dallek** (Boston University). *Lyndon B. Johnson: Portrait of a President* (abridged). Oxford University Press, November 2003

**Lorraine Daston** (Max-Planck-Institut für Wissenschaftsgeschichte), editor. *Things That Talk: Object Lessons from Art and Science*. MIT Press, April 2004

**Gerald M. Edelman** (Neurosciences Research Foundation, Scripps Research Institute). *Wider Than the Sky*. Yale University Press, March 2004

**Paul Ehrlich** (Stanford University) and **Anne Ehrlich** (Stanford University). *One with Nineveh: Politics, Consumption, and the Human Future*. Island Press, May 2004

**Peter Eisenman** (Eisenman Architects, Yale University). *Eisenman Inside Out: Selected Writings, 1963–1988*. Yale University Press, May 2004

**Thomas Eisner** (Cornell University). *For Love of Insects*. Harvard University Press, November 2003

**Harry G. Frankfurt** (Princeton University). *The Reasons of Love*. Princeton University Press, February 2004

**Marion R. Fremont-Smith** (Kennedy School of Government, Harvard University). *Governing Non-profit Organizations: Federal and State Law and Regulation*. Harvard University Press, May 2004

**John Lewis Gaddis** (Yale University). *Surprise, Security, and the American Experience*. Harvard University Press, March 2004

**Howard Gardner** (Harvard Graduate School of Education). *Changing Minds: The Art and Science of Changing Our Own and Other*

*People's Minds*. Harvard Business School Press, April 2004

**Allan Gibbard** (University of Michigan). *Thinking How to Live*. Harvard University Press, October 2003

**Owen Gingerich** (Harvard University). *The Book Nobody Read: Chasing the Revolutions of Nicolaus Copernicus*. Walker, March 2004

**Chalmers Johnson** (Japan Policy Research Institute, California). *The Sorrows of Empire: Militarism, Secrecy and the End of the Republic* (The American Empire Project). Metropolitan Books, January 2004

**Frank Kermode** (University of Cambridge). *The Age of Shakespeare*. Modern Library, February 2004

**Brian Lamb** (C-SPAN), editor. *Booknotes: On the American Character – People, Politics, and Conflict in American History*. Public Affairs, March 2004

**Benoit Mandelbrot** (Yale University). *Fractals and Chaos: The Mandelbrot Set and Beyond*. Springer-Verlag, January 2004

**Martin Marty** (University of Chicago). *Martin Luther*. Viking/Lipper, February 2004

**Rafael Moneo** (Harvard University). *Theoretical Anxiety and Design Strategies in the Work of Eight Contemporary Architects*. MIT Press, May 2004

**Joseph S. Nye, Jr.** (Kennedy School of Government, Harvard University). *Soft Power: The Means to Success in World Politics*. Public Affairs, April 2004

**Stanley G. Payne** (University of Wisconsin-Madison). *The Spanish Civil War, the Soviet Union, and Communism*. Yale University Press, May 2004

**Jaroslav Pelikan** (Yale University). *Interpreting the Bible and the Constitution*. Yale University Press, May 2004

**Marjorie Perloff** (Stanford University). *The Vienna Paradox*. New Directions Press, May 2004

**Richard Pipes** (Harvard University). *Viki: Memoirs of a Non-Belonger*. Yale University Press, November 2003

**Don Michael Randel** (University of Chicago). *The Harvard Dictionary of Music*, Fourth Edition. Harvard University Press, November 2003

**Anne-Marie Slaughter** (Princeton University). *A New World Order*. Princeton University Press, March 2004

**Garry Wills** (Northwestern University). *Negro President: Jefferson and the Slave Power*. Houghton Mifflin, November 2003

**Perez Zagorin** (Charlottesville, Virginia). *How the Idea of Religious Toleration Came to the West*. Princeton University Press, November 2003

## Exhibitions

**Chuck Close: Prints: Process and Collaboration**. The Metropolitan Museum of Art through April 18, 2004.

**Eric Fischl: Cosmos and Chaos: A Cultural Paradox**, Robertson Museum and Science Center, Binghamton, N.Y., through April 30, 2004.

**Lee Friedlander: Lee Friedlander: American Musicians**, Toledo Museum of Art through May 2, 2004.

**David Hockney: The Artful Teapot**, Mint Museum of Craft & Design, Charlotte, N.C., through May 30, 2004.

**Cindy Sherman: The Last Picture Show**, UCLA Hammer Museum through May 11, 2004; *Strange Days*, Chicago Museum of Contemporary Art through July 4, 2004; and *The Unseen Cindy Sherman: Early Transformations (1975–1976)*, Montclair Art Museum in New Jersey through August 1, 2004.

We invite all Fellows and Foreign Honorary Members to send notices about their recent and forthcoming publications, scientific findings, exhibitions and performances, and honors and prizes to [bulletin@amacad.org](mailto:bulletin@amacad.org). Please keep us informed of your work so that we may share it with the larger Academy community. ■

## Penobscot Bay Expedition

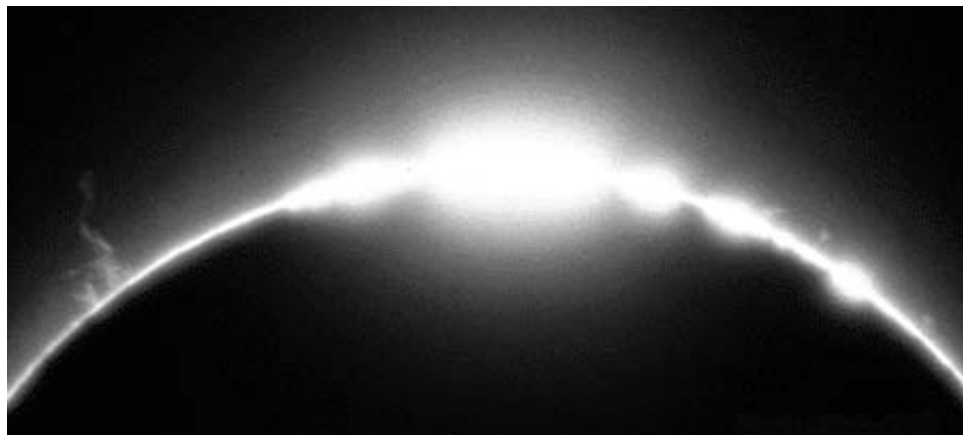
At a meeting on August 30, 1780, Academy members voted to appoint “a Committee to confer with the Reverend and Honorable Corporation of the University of Cambridge upon pursuing measures to procure an accurate observation of the Solar eclipse in October next, in the eastern part of this State.” Harvard Professor and Academy Fellow Samuel Williams was put in charge of the expedition and later wrote an account in the first volume of the Academy’s *Memoirs* (1785):

“[I]t is but seldom that a total eclipse of the sun is seen in any particular place. A favourable opportunity presenting for viewing one of these eclipses on October 27, 1780, the American Academy of Arts and Sciences, and the University at Cambridge, were desirous to have it properly observed in the eastern parts of the State, where, by calculation, it was expected it would be total. With this view they solicited the government of the Commonwealth, that a vessel might be prepared to convey proper observers to Penobscot-Bay [now Maine]; and that application might be made to the officer who commanded the British garrison there, for leave to take a situation convenient for this purpose.

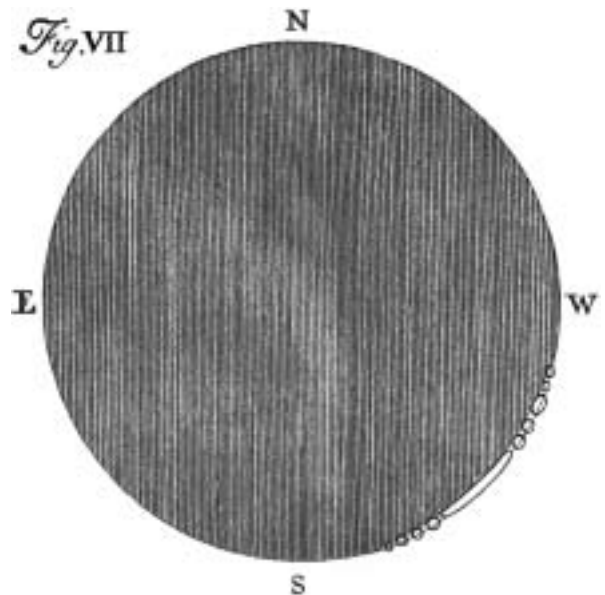
“Though involved in all the calamities and distresses of a severe war, the government discovered all the attention and readiness to promote the cause of science, which could have been expected in the most peaceable and prosperous times; and passed a resolve, directing the Board of War to fit out the Lincoln galley to convey me to Penobscot....

“We took with us an excellent clock, an astronomical quadrant of  $2\frac{1}{2}$  feet radius..., several telescopes, and such other apparatus as were necessary.”

**Photograph of Baily’s beads, taken in 1995 from Dundlod, India, using a high-quality 4-inch aperture refractor telescope. The telescope was mounted on a motorized equatorial tripod, which allows the telescope to track the Sun.**



Photograph © 2004 by Fred Espenak, www.MirEclipse.com.



An illustration of Baily’s beads printed in the Academy’s *Memoirs* (1785).

Williams’ account includes what probably was the first description of Baily’s beads (named for British astronomer Francis Baily, who, in 1836, noted the light effect produced during an eclipse by the uneven surface of the moon). Some fifty years earlier, Williams had written: “Immediately after the last observation, the sun’s limb became so small as to appear like a circular thread, or rather like a very fine horn. Both the ends lost their acuteness, and seemed to break off in the form of small drops or stars; some of which were round, and others of an oblong figure. They would separate to a small distance: Some would appear to run together again, and others diminish until they wholly disappeared.” ■

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