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NECESSARY IMPEACHMENTS, NECESSARY ACQUITTALS
TOD LINDBERG

"HIGH CRIMES" AFTER CLINTON
KEITH E. WHITTINGTON

THE GOP'S TWO BRANDS
DAVID WINSTON

FRATERNITIES ON THE ROCKS
MAUREEN SIRHAL

ALSO: REVIEWS AND AN EXCHANGE
WOODY WEST, CHRISTOPHER CALDWELL, AND JOHN PODHORETZ; HOWARD GARDNER *v.* MARY EBERSTADT

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turbances to a carefully wrought constitutional system based on the separation of legislative, executive, and judicial powers. It was these disturbances around which sentiment for removal gathered in the first place — only to dissipate in the end.

Three conditions

WHY WAS PRESIDENT CLINTON impeached? And why was he acquitted? What were the causes?

It is, of course, possible to answer this question at various levels of abstraction, and accordingly to take his case as a window of one sort or another on the condition of American politics, culture, society, and the rest. There should be little doubt that Clinton's impeachment and acquittal will long stand as a major feature of the American political landscape. Aspects of the events of 1998-99 will long be adduced as evidence in theories about our times and mores. But short of this abstract inquiry, highly subject to disagreement as it is, there are a few specific aspects of the Clinton affair that most people, perhaps, would readily agree were necessary conditions for impeachment.

First, the president was unwilling to restrain his own conduct at a time when the ongoing Paula Jones case put him at risk of exposure of the relationship, and he was willing to be deceitful in court about it. Obviously, if Clinton had walked away from Monica Lewinsky's overtures, none of what happened next would have happened. Not only the president's opponents, but also many of his allies, were quite clear in their view that the president recklessly and shortsightedly failed to conduct himself in a manner consistent with his office. He himself was responsible for that improper conduct. There was no deflecting responsibility to others.

Had the Jones case been settled earlier, before Clinton was called to answer about other women with whom he might have been involved, there would of course have been a political cost to the president — both for settling and in the event that information about recent sexual encounters became public — but no impeachment. Similarly, had the Supreme Court ruled that the president is constitutionally immune from civil suit while he is in office, as Clinton's lawyers urged and the court unanimously rejected, or had Congress passed a statute creating such limited immunity, there might once again have been embarrassment in the event of disclosure, but there would likewise have been no impeachment.

And it seems unlikely that, if Clinton had told the whole truth in the Jones case, the ensuing sex scandal would have led to his impeachment. Although the president's defenders argued otherwise, most of those who favored impeachment insisted that the sexual relationship itself was not the issue, but rather lying under oath and obstruction of justice. Given the narrowness of the eventual vote in favor of the two articles, it seems unlikely

that a mere "morals" charge, in the absence of conduct arguably criminal, could have gained a majority vote in the House.

The second necessary condition was the control of the House of Representatives by the president's political opposition. This point hardly needs belaboring. When the House voted December 19, 1998, approving articles charging the president with lying to a grand jury and obstruction by votes of 228-206 and 221-212, no more than five Democrats voted in favor. There is little reason to think that a Democratic House of Representatives would have voted even to begin an impeachment inquiry. It is possible, given the statements made by Democrats, that the House and then perhaps the Senate would have sought to pass some resolution of censure against Mr. Clinton for his conduct, whether out of the heartfelt conviction that what he did was wrong, as many Democrats professed, or out of a perceived political need to offer a response. But it's hard to imagine more than that.

There is little reason to think that a Democratic House would have voted even to begin an inquiry.

If these were necessary conditions for impeachment — the president's own conduct in the context of the Jones case and the control of the body with impeachment power by his opposition — were they also sufficient conditions?

In the light of the huge role in the impeachment process played by independent counsel Kenneth Starr, it is difficult to say that the two preceding conditions would have been enough. It was Starr's office that, upon obtaining evidence of perjury and obstruction in the Jones case, began an investigation. Nor was this solely a criminal investigation, designed to lead exclusively to a decision on whether or not to prosecute Clinton at some point, perhaps after he left office. The law requires the independent counsel to forward to Congress evidence of impeachable offenses by the president or other officials. If not as a constitutional matter, then certainly by statutory authority, Starr's office carried the impeachment process forward — by gathering, over the course of nine months, evidence about the president's actions; by discussing the investigation with the media, in a fashion Starr's office believed consistent (but the president's lawyers believed inconsistent) with the requirements of grand jury secrecy; then by forwarding to the House a report detailing that evidence and listing the independent counsel's view of the impeachable conduct; then by the testimony of Starr himself as a witness before the House Judiciary Committee.

Moreover, at numerous points in the course of the Starr investigation of the Lewinsky matter, members of the Republican congressional majority, including the House leadership and many members of the House Judiciary Committee, preeminently Chairman Henry Hyde, made a point of deferring to Starr's investigation. Hyde took it as his duty to let the Starr inquiry run

its course before acting on the allegations of perjury and obstruction being bandied about. A July 30, 1998, statement was typical: "I don't want to hurry or press or push the independent counsel. I don't want it to appear that we're driving his inquiry." Other members of both parties, and for different reasons, frequently said in response to questions about what the president's fate should be that they were refraining from making any judgments until the independent counsel had finished his work. Whether this was sincere open-mindedness or simply a way of evading the question, these members of the House majority themselves placed Starr at the center of the process. And certainly the president's staunchest defenders placed Starr at the center — as an out-of-control prosecutor obsessively pursuing the president for partisan and perhaps puritan reasons.

Congress, the White House, and anyone paying the slightest attention understood that Starr was the central player.

The Constitution vests the House of Representatives with "the sole power of impeachment," and one might say that until the House voted to undertake an impeachment inquiry, no such proceedings were under way. But this is surely an exercise in hair-splitting. The independent counsel statute that Congress itself passed and that the president himself signed explicitly assigned the independent counsel a fact-finding role that could lead to impeachment proceedings. The law requires that the independent counsel advise the House "of any substantial and credible information which the independent counsel receives, in carrying out the independent counsel's responsibilities under this chapter, that may constitute grounds for an impeachment." In the relevant period, Congress, the White House, and anyone paying the slightest attention understood that Starr was the central player and awaited his report. It is absurd to contend that the arrival of the report in Congress marked the *beginning* of a process, rather than some point well advanced. And finally, the House Judiciary Committee itself legitimized the centrality of Starr's role by conducting very little fact-finding of its own, instead basing its proceedings on the evidence he gathered. So firm was the committee's embrace of Starr's material that the majority did not feel a need to try to resolve the discrepancies Starr presented in various witnesses' accounts of certain events; the committee majority felt, in Hyde's view, that Starr's fact-finding provided more than enough evidence to proceed with impeachment articles. "We had 60,000 pages of testimony from the grand jury, from depositions, from statements under oath," Hyde said. "That's testimony you can believe and accept." The search for certitude in murky areas was a task that could be left to a Senate trial.

We might try to speculate about what would have happened had there been no independent counsel investigation under way at the time Linda

Tripp met with Paula Jones's lawyers and led them to questions that might ensnare the president if he answered untruthfully. Tripp professed, at one point, that her reason for taping her conversations with Monica Lewinsky was self-protection: She feared being called upon to commit perjury. Yet it seems clear she also intended to inflict as much political damage on the president as possible. In the absence of an independent counsel to whom to take her information, she might have delivered it to the Justice Department, or to the Jones case's Judge Wright, or to Jones's lawyers, or to the Judiciary Committee, or to the media. Regardless of which course she chose, it seems likely that the information would have become public, probably by her own agency — at least to judge by the behind-the-scenes actions of Tripp and her confidante, Lucianne Goldberg, described by *Newsweek*'s Michael Isikoff in his account of how he came to break the story, *Uncovering Clinton: A Reporter's Story* (1999).

A firestorm would have greeted any Judiciary Committee fact-finding on the Lewinsky matter.

Then what? No one can say with certainty, of course. But surely there would have been a substantial outcry. The conservative editorial pages would have demanded an investigation. The president's detractors would have had a field day. The salacious details of the story would have outed. Judge Wright, one assumes, would have viewed Clinton's deception just as seriously and unfavorably. But what about the road to impeachment?

In order to conclude that Starr's role wasn't also a necessary condition for impeachment, we must imagine the House Judiciary Committee, on the say-so of its chairman, deciding solely on the basis of the Tripp accusations to look into the matter, notwithstanding the president's denial. It seems reasonable to assume that Lewinsky would not volunteer further information. At some point, to proceed with the fact-gathering it would be necessary to compel her testimony.

What would Democrats on the Judiciary Committee have made of this? What about the president's other defenders? They would surely not have idly acquiesced. Recall, too, that when the story broke, its main focus was the independent counsel investigation into perjury by the president in the Jones case. In the absence of such an investigation, and given only an investigation (or merely the possibility of one) by the Republican-controlled Judiciary Committee — without, in short, Starr's official quasi-criminal, quasi-impeachment inquiry into the president's actions — Clinton's defenders would surely have had even better success portraying the matter as base snooping into private conduct motivated by mere partisanship.

Such is the firestorm that would have greeted any Judiciary Committee fact-finding on the Lewinsky matter. While some GOP members would certainly have wanted to proceed — Rep. Bob Barr of Georgia, after all, had

called for the president's impeachment before anyone had ever heard of Monica Lewinsky — one wonders how committed other members of the Judiciary Committee majority would have been.

The House leadership would presumably have had some sway over the course of events as well. Subsequent revelations about House Speaker Newt Gingrich's own extramarital affair at the time give one cause to wonder whether, without an independent counsel to defer to, he would have supported an inquiry by the House whose first question would be whether or not Clinton had a sexual relationship with Lewinsky. In the event, Gingrich told the *Washington Post* in August 1998 that "a single human mistake" would not constitute grounds for an impeachment inquiry. "I don't think the Congress could move forward only on Lewinsky, unless [Starr] had such a clear case, such an overpowering case." He also said the matter was "not about scandals in the gossipy sense or sexual behavior in the gossipy sense. It's about whether or not the law has been violated, and if so, is it a pattern of violation [or] is it a one-time event." The speaker's words here can perhaps be seen now to have had a greater sense of personal urgency than was apparent at the time.

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In addition, let us not forget the legal mandate of the independent counsel: to advise the House of "substantial and credible information . . . that may constitute grounds for an impeachment." The Constitution calls for removal "on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." Which conduct, precisely, falls within the compass of "high crimes and misdemeanors" has been disputed by scholars, politicians, judges, and the public since the debate over the ratification of the Constitution itself. The statute here gives the independent counsel the first judgment on the subject of what might constitute an impeachable offense. In the absence of an independent counsel to make a determination on what might or might not be considered impeachable, the Judiciary Committee majority would have to make that decision itself. To be sure, the Judiciary Committee did not accept all of Starr's charges, and the House accepted fewer still. But it was Starr who, in effect, had the first opportunity to define the scope of impeachability. He presented a lengthy document and numerous boxes of evidence to the House, to which the Judiciary Committee would have to react. Would the Judiciary Committee have gone as far as Starr on its own?

Finally, as it happened, the full House rejected an impeachment article approved by the committee charging the president with lying under oath in the Jones case. The perjury-related article approved by the House concerned lying before Starr's grand jury. In the absence of the president's appearance

there, House members would have been forced to confront head-on whatever underlay their greater reluctance to recommend Clinton's removal for the conduct that started all of the trouble in the first place. Perhaps Judge Wright's ire, coming not after impeachment and acquittal, as it did, but at her own pace, would have galvanized the Judiciary Committee or the House as a whole into action it would not otherwise have taken; on the other hand, one might as plausibly speculate that many members would have been perfectly content to let her contempt ruling and the fine she imposed on Clinton stand as sufficient rebuke to his conduct.

Perhaps a House vote to impeach the president could have resulted even in the absence of the independent counsel investigation. Obviously, the answer is unknowable. But the obstacles in the way of such an outcome look formidable indeed. If the president's own misconduct in the context of the Jones case and the control of Congress by his political opponents were necessary conditions for impeachment, the independent counsel investigation, which was undeniably central to the process as it actually unfolded, looks to have been no less necessary.

The independent counsel problem

THE INDEPENDENT COUNSEL LAW, first passed in 1978, has its origins in post-Watergate reforms aimed at ensuring accountability for criminal misconduct at the highest levels of the executive branch, where a president might have a political interest in ignoring or even covering up wrongdoing. Critics of the law, mostly conservatives initially, argued that it was unconstitutional: The power to prosecute is one of the essential powers of the executive; the Constitution vests sole executive power in the president; therefore, a prosecutor acting outside the authority of the president would necessarily be a constitutional anomaly.

In addition to the constitutional affront to the separation of powers represented by the office of independent counsel, critics pointed to numerous other problems with the law: Unlike an ordinary federal prosecutor, an independent counsel has a limitless amount of time and unconstrained resources to pursue wrongdoing on the part of a particular individual or group of people. Ordinary prosecutors begin with evidence of a crime and then try to identify its perpetrators. An independent counsel investigation can be triggered merely on the basis of "specific" information, requiring "further investigation," "from a credible source" about criminal conduct by a person the law covers — conditions easily met. Once appointed, the prosecutor, with the supervising court's approval, can broaden the inquiry more or less at will into any and all allegations against the subject. Ordinary prosecutors face competing demands for their attention, and therefore must apply real-world standards of discrimination on the question of how worthy of pursuit a particular case is. Independent counsels are faced with almost an opposite pres-

sure to be thorough — to give up on no avenue of investigation until it has been explored, no matter how unlikely the prosecutor thinks it is to yield anything of consequence.

Theodore B. Olson, a Reagan Justice Department official and the target (eventually completely exonerated) of an independent counsel inquiry, mounted a challenge to the constitutionality of the law under which he was being investigated. In 1988, the D.C. Circuit Court of Appeals ruled in his favor. The opinion, written by Judge Laurence H. Silberman, was witheringly thorough in detailing the defects of the law and its problematic constitutional character with regard to the separation of powers. The Supreme Court, however, disagreed. In a 7-1 ruling in *Morrison* v. *Olson* (1988), with Justice Antonin Scalia the sole dissenter, the court held, in effect, that there were sufficient safeguards for the executive branch in the law to avoid constitutional difficulties. Chief Justice Rehnquist, who would later preside over Clinton's Senate trial, delivered the opinion of the court. Scalia reasserted many of the points Silberman had made, and added some more besides, but the law stood vindicated by the high court.

Conservatives were unpersuaded, and they found in Iran-contra independent counsel Lawrence Walsh the living embodiment of the law's defects. Liberals, needless to say, saw matters differently. They defended Walsh, focusing instead on the gravity of the alleged crimes and the constitutional effrontery of Reagan administration officials. Neither side gave any ground through the effective end of the Iran-contra investigation at the conclusion of the Bush administration, with the outgoing president's pardon of six Reagan-era officials.

The law expired in 1992. Its reenactment in 1994 had the support of the Clinton administration and bipartisan support on Capitol Hill. Attorney General Janet Reno testified to its importance before the Senate Governmental Affairs Committee in May 1993: "While there are legitimate concerns about the costs and burdens associated with the act, I have concluded that these are far, far outweighed by the need for the act and the public confidence it fosters." In the course of five years, however, the administration changed its mind. In March 1999, shortly before the statute was due to expire, Deputy Attorney General Eric H. Holder Jr. appeared before Congress attesting to the administration's new view: "The experience of the Department over these last five years has been enlightening. It takes a close-up view of the operation of the Independent Counsel Act to understand that it has serious flaws. The Department of Justice has reluctantly come to the conclusion that the structural flaws we have identified here cannot be fixed."

In a stunning appearance on Capitol Hill in April 1999, Kenneth Starr himself announced his opposition to the law under which he had been investigating the Clintons, culminating in his report to the House. "By its very existence, the act promises us that corruption in high places will be reliably monitored, investigated, exposed, and prosecuted, through a process fully

insulated from political winds," Starr said. "But that is more than the act delivers, and more than it can deliver under our constitutional system." Bipartisan support for the law had turned into bipartisan disillusionment, and this time the law lapsed without a serious prospect of eventual revival.

The explanation for this is hardly mysterious. Democrats had come to see the independent counsels of the Clinton period in the same light as Republicans had seen them in the Reagan-Bush period: as dangerously powerful if not out of control. Walsh now had an opposite number: Kenneth Starr was to Democrats what Walsh had been to Republicans. There were other independent counsel prosecutions for Democrats to resent as well, much as Republicans still rankled at the memory of the investigations into Olson, Attorney General Edwin Meese III, and others: Independent counsels had investigated gifts accepted by Clinton Agriculture Secretary Mike Espy (he was acquitted); lying to the FBI about payments to a former lover by HUD Secretary Henry Cisneros (he pleaded guilty to reduced charges); and financial impropriety by Commerce Secretary Ron Brown (the investigator closed shop following Brown's death in a plane crash on an aid mission to the former Yugoslavia).

It is beyond our purpose here to assess the relative merits of the claims of abuse at the hands of unaccountable prosecutors. This much, though, is plain: The subjects and their friends on both sides of the partisan divide, rightly or wrongly, *feel* abused by independent counsel investigations. The sentiment is not necessarily consistent or general: There are Democrats who would defend Walsh to the end but say Starr was completely out of control, Republicans who would defend Starr even as they continue to despise Walsh. But a new element of bipartisan consensus did form in Washington in the 1990s. It was that our political system is better off without an independent counsel law. We do not want these prosecutors anymore.

Those still concerned with the potential for executive dereliction of duty in pursuit of politically embarrassing wrongdoing will have to find other ways of holding the executive accountable. While the law remained in force, many Republicans demanded an independent counsel to look into the 1996 Democratic fund-raising scandal; Attorney General Reno declined to find that the statute's terms for seeking the appointment of one had been met. But despite control of both the House and the Senate, Republicans made no attempt to reenact the law. On the contrary, the hearings Congress held on the subject seemed weighted toward reasons it should be allowed to lapse.

An extra-constitutional role

OF COURSE, the Supreme Court didn't consider the constitutionality of the law's provisions related to the role of the independent counsel as a fact-finder in impeachment proceedings, or even as a preliminary fact-finder in what might (or might not) turn out to be impeachment

proceedings. It is quite possible that a Supreme Court reviewing the matter would find no constitutional difficulties with this part of the law. Congress, after all, enacted the law with this provision — in accordance with its "sole power of impeachment," thereby laying out the circumstances under which an outside investigator should look into wrongdoing and the circumstances under which he is obliged to report back to Congress. The president himself (Bill Clinton, no less) signed the law. Perhaps that's good enough.

Except that manifestly, it is not good enough. The Clinton impeachment was, in its entirety, novel, and the source of the novelty was the independent counsel act. If not an *un*constitutional instrument in furthering the impeachment of President Clinton, Kenneth Starr's office was surely an *extra*-constitutional instrument in that endeavor. It is hard to imagine Congress, upon catching wind of possibly illegal, possibly impeachable conduct by the president, then immediately empowering an investigator to do what the independent counsel was required by law to do — take as much time, in secrecy, with the full powers of compulsion of a federal prosecutor and the ability to grant unlimited immunity, with no requirement of interim consultation with any member of Congress let alone supervision by any congressional committee or anyone else, but with leave to keep the press informed of his activities, to investigate and reach a conclusion for presentation to Congress about the president's possible impeachable offenses. In fact, the notion is ridiculous.

We have a process whose legitimacy is open to question on account of this extra-constitutional mechanism.

And if, as seems clear, the role of the independent counsel was necessary for events to culminate in the House vote to impeach, then we have a process whose legitimacy is open to question on account of this extra-constitutional mechanism. Starr himself, in his testimony opposing reenactment of the independent counsel statute, said that the public could lose confidence in the integrity of the investigation because of political attacks on the investigators — attacks to which the independent counsel himself could not effectively respond. This is surely true. But the charge assumes its conclusion, namely, the integrity of the investigators and investigation. The problem is that one may conclude that Starr and his team acted with perfect propriety, proportion, judiciousness, and probity at all times in the course of their investigation — but that even so, there was something fundamentally wrong with the investigation, something beyond the control of the investigators.

These circumstances suggest that while the siege on the independent counsel laid by the president's defenders was far from laudable, it was certainly understandable. The role of the independent counsel was the most dubious aspect of the impeachment process, its weakest link — not the facts, not the Constitution, not the statutes or case law on perjury or obstruction; not

even, given its total deference to the independent counsel investigation while it was under way and to the facts amassed by the independent counsel once he presented them, the congressional majority itself. The role of the independent counsel would be an obvious place to focus a defense, and so it was.

The attack on Starr was waged at times in highly personal terms. Some of the president's defenders implausibly characterized him as a sex-obsessed weirdo, and many even believed their superheated rhetoric. But the attack was not in fact personal, for anyone in Starr's position would surely have been subjected to precisely the same thing. No one in Starr's role — that is, an independent counsel obviously engaged in preparing an impeachment case against the president — could possibly be deemed fair-minded and upright by the president's loyalists.

Accepting facts, rejecting conclusions

THE HOUSE, in approving two articles of impeachment against the president, voted to accept the facts as discovered and forwarded by the independent counsel. On February 12, 1999, the Senate voted to acquit Clinton on those two articles, 45-55 and 50-50. In doing so, the Senate voted in effect to reject the contention that the facts warranted impeachment and removal — a contention whose origins lay in the office of the independent counsel. In the Senate no less than in the House, then, the independent counsel's work was at the center of the proceedings.

The Starr report, and the boxes of evidence that accompanied it, contained testimony and evidence about the facts of the president's conduct as well as quasi-legal, quasi-constitutional conclusions that the president may have committed impeachable offenses. One might focus on the facts, as the House mainly did, and ponder the independent counsel's conclusion that they constituted evidence of high crimes or misdemeanors; House majorities on two of the articles derived from Starr's work agreed with his conclusion. Or one might focus, as the Senate mainly did, on the conclusion itself, and ponder whether the House, following Starr, should have reached the conclusion it did. In the last analysis, the reason the Senate conducted only a truncated trial, with no witnesses brought to the chamber, was simply that the constitutionally required two-thirds of the Senate could not be mustered for conviction even if everything alleged by the House was true. Sen. Jim Jeffords of Vermont, a Republican who voted to oppose the articles, said, "The facts and circumstances of this case are low and tawdry, but these same circumstances do not, in my opinion, cause his offenses to rise to the level of impeachable acts." Democrat Tom Harkin of Iowa said, "This case should never have been brought to the United States Senate." Democrat Richard H. Bryan of Nevada said, "I conclude that the evidence presented in this case does not reach the standard commanded by the Constitution to convict and remove a president."

Obviously, this was likewise the view of the vast majority of House Democrats who voted against the articles. Some, such as ranking Judiciary Committee Democrat John Conyers Jr. of Michigan, also argued that the facts did not support the allegations in the articles. But others simply rejected the independent counsel's conclusions about impeachable offenses and were accordingly less interested (in some cases, uninterested altogether) in the facts. Rep. Barbara Lee of California said, "This process and this action are the real crimes against the American people and our democracy." Given the president's consistently high job-approval rating; public opinion polls showing substantial majorities opposed to impeachment; and surprising Republican losses in the November congressional elections, expectations were running high that a sufficient number of House Republicans would preemptively reach the conclusion that the president should stay in office and the proceedings should somehow be brought to an end.

Some have argued that the more conservative powers in the House, specifically Majority Whip Tom DeLay, forced the hand of moderate Republicans by foreclosing the option of a censure resolution and insisting that the House vote up or down on the four articles approved by the Judiciary Committee. This is not terribly persuasive, especially in the light of the subsequent Senate action. Senators, too, faced an up or down vote on conviction, with no third option, and here enough Republicans voted to acquit to deprive both counts of even simple majority support. If a small number of Republicans in the House had adopted the majority sentiment in the Senate, the matter would have ended with the defeat of the articles on the floor. That didn't happen. The real choice was between contending points of view: If the offenses the independent counsel identified as impeachable were indeed the high crimes and misdemeanors to which the Constitution refers, the evidence was sufficient to find against the president; if the offenses did not rise to the level of high crimes and misdemeanors, then the particulars the independent counsel provided didn't matter and might well constitute the worst sort of snooping. The House inclined toward the former view and the Senate the latter, but both chambers were narrowly divided on which to embrace. Whatever the outcome, the votes both in the House and the Senate were decisions on whether to endorse the work and the conclusions of the extra-constitutional office of independent counsel.

Johnson and the tenure act

If the Clinton impeachment and acquittal had at its center the striking anomaly of the extra-constitutional (arguably unconstitutional) independent counsel statute, what is equally striking in American history is how frequently impeachment and acquittal have had anomalous, extra-constitutional or unconstitutional laws at their center. Consider our most famous impeachment and acquittal prior to the events of

1998-99: that of President Andrew Johnson in the post-Civil War period of Reconstruction.

The causes of the Johnson impeachment, the necessary conditions underlying it, have noteworthy parallels with the case of President Clinton. First of all, Congress was dominated by a faction grossly out of sympathy with the president. The elevation of Lincoln's vice president exposed a sharp contrast in view between Johnson and the dominant Radical Republicans in the House on the question of how to reintegrate the states of the defeated Confederacy into the government of the United States. The Radicals wanted, and passed legislation to impose, stringent conditions for readmission. They were not eager to grant forgiveness to those who had waged war on the Union, nor were they willing to readmit states that continued to perpetuate racial inequality by other means. Johnson, a Union man from secessionist Tennessee, favored a more lenient approach. He freely vetoed Radical legislation. The animosity of the confrontation was if anything more bitter than that between the GOP Congress of 1995-99 and President Clinton.

The causes of the Johnson impeachment have noteworthy parallels with the case of Clinton.

As well, Johnson could hardly claim to have been blameless. He avowedly adopted a strategy according to which he would use all of the powers of his office to oppose and block the stringent Radical measures. As Michael Les Benedict describes it in *The Impeachment and Trial of Andrew Johnson* (1973), "Where it suited him, he had ignored the Senate's right to confirm government appointments, disregarded the Test Oath law, and emasculated the Freedmen's Bureau and Confiscation Acts." By all accounts a stubborn man who became inflexible once he had made up his mind, he was also willing to take to the hustings to explain in no uncertain terms why his opponents were absolutely wrong and scoundrels besides. In the context of the times, this was rather scandalous behavior, especially as perceived by Republicans in Congress. The presidency was a far less powerful office then than now. Lincoln had laid claim to far-reaching wartime powers, but the widely held expectation was that after the passing of the crisis of the house divided, the office would return once again to its smaller scope. Johnson's actions ran consistently and deliberately against this expectation. Unlike Clinton, nothing Johnson did or was even accused of doing could be construed as felonious. But he was somewhat relentless in flouting the standards of the day — and in this respect an agent of his own subsequent troubles.

The specific articles with which Johnson was charged mainly related to his effort to dismiss his secretary of war, William Stanton. Under the Tenure of Office Act, which had been passed over Johnson's veto in 1867, an official appointed during a president's term who had been confirmed by the

Senate held office until the Senate confirmed his successor — he did not hold it solely at the pleasure of the president. Stanton, a holdover from Lincoln's Cabinet, found himself increasingly at odds with Johnson's views on Reconstruction. Johnson, well aware that he was courting congressional ire, suspended him and named Ulysses S. Grant interim secretary. The Senate, however, refused to confirm Grant, whereupon Grant stepped aside, giving the office back to Stanton — much to Johnson's displeasure, since he was apparently expecting Grant to stay on, forcing Stanton to mount a court challenge. In February 1868, Johnson fired Stanton outright, naming another interim secretary. But Stanton, by now a hero to the Radicals and a symbol of Johnson's depredations, refused to leave. And the House quickly voted, on party lines, to impeach Johnson, shortly thereafter settling on charges related to the Tenure of Office Act as well as other articles.

Accounts usually cast it as a product of a vicious struggle between two radically opposed points of view.

Accounts of the Johnson impeachment usually cast it as a product of a vicious struggle between two radically opposed points of view, in which the specific charges in the articles of impeachment merely vented the underlying partisanship. In *Presidential Impeachment* (1978) John R. Labovitz writes, "The Johnson case is the prime example in our history of an impeachment based on a pretextual issue." Other historians have hailed the "recusant Republicans" in the Senate who voted against Johnson's removal for preventing a constitutional miscarriage — ouster of the chief executive not for high crimes and misdemeanors but over a policy disagreement, a step down the road toward a quasi-parliamentary system of government, in which the executive serves at the pleasure of the legislative majority. One frequently hears the Clinton impeachment described in similar terms — as a proxy for partisan bile. Hillary Clinton stated the case at its baldest when she described the president as a victim of a "vast right-wing conspiracy." Although many of those who supported Clinton throughout the ordeal would not go as far as that, insisting that the president had behaved reprehensibly, many held that Starr's actions went too far and rightly or wrongly saw the impeachment's origins in a partisanship the Republican congressional majority shared.

Clinton did not need his own "recusant Republicans" to ensure acquittal; there were more than enough Democrats in the Senate to keep him in office, at least so long as the party held the line in his defense. But he attracted enough anyway to prevent even a simple majority in favor of conviction. As in the Johnson case, perhaps even more so, this judgment invites the conclusion that the charges in the articles were trumped up for political reasons, or at least secondary to the political considerations.

Except that this analysis ignores a third commonality of the Clinton and

Johnson impeachments. In addition to a partisan opposition in Congress and highly dubious conduct on the part of the president, the Johnson case had at its very core, similarly, a piece of flawed legislation that did serious damage to constitutional arrangements regarding the separation of powers. In this case, it was not legislation that shaped the process of impeachment, as the independent counsel statute did; it was the legislation the violation of which constituted the principal charge against the president: the Tenure of Office Act restricting Johnson's ability to remove senior officials.

The historical judgment on the tenure act is not in much dispute. In *Myers* v. *United States* (1926), the Supreme Court took up the question of whether the president "has exclusive power of removing executive officers of the United States whom he has appointed by and with the advice and consent of the Senate." Chief Justice William H. Taft, in a landmark opinion that discusses in detail the constitutional history of the president's powers, the understanding of them reflected in early legislative history, and subsequent attempts to circumscribe them, concluded for the court that separation of powers concerns made the power of removal of officers the president's alone. Taft described this view as firmly established and widely accepted from the republic's earliest days — until the Reconstruction Congress passed the tenure act as well as other laws governing executive branch personnel that "attempted to reverse this constitutional construction," arrogating to Congress the power to decide where to place the removal power, and granting that power to the Senate.

Neither Johnson nor subsequent presidents accepted this usurpation of executive authority. Johnson's successor, President Grant, argued urgently for the repeal of the act in his first message to Congress, in fear of "the embarrassment possible to arise" from leaving on the books a statute "inconsistent with a faithful and efficient administration of the government." In response to Grant's appeal, the House voted to repeal the law, but the Senate, entering a period at the zenith of its power in our political system, didn't act. The particular law the court took up and overturned in *Myers*, concerning the appointment of postmasters and purporting to restrict their removal, passed in this period, in 1876. The Tenure of Office Act wasn't repealed until 1887.

But in the scheme of things, do the particular provisions of the law the House charged Johnson with violating matter all that much? If the charges were merely a pretext for trying to oust him for political reasons, wouldn't any pretext do?

Gerald Ford, reflecting on impeachment in 1970, before the House majority leader would be elevated to the vice presidency and the presidency, once famously said that "an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history; conviction results from whatever offense or offenses two-thirds of the other body considers to be sufficiently serious to require removal of the accused from office." This is, in some sense, unarguably true, since the House has

the sole power of impeachment and the Senate's judgment at trial is final. But as a historical description of impeachments past, it is rather off the mark.

The fact is that when considering impeachment, the House customarily looks for "high crimes and misdemeanors" first in violations of the law — particular violations of particular laws. The literature on impeachment is rich with consideration of the question of whether impeachment is justifiable for conduct that is not criminal. As Raoul Berger demonstrated in *Impeachment: The Constitutional Problems* (1973), such impeachments have ample precedent in the English tradition, from which ours derives. We also have the sad case of the impeachment and removal of Judge Thomas Pickering in 1803-04; this once estimable patriot of the Revolution fell prey to mental illness, which he combined with drunkenness. The House and Senate agreed that his conduct on the bench was intolerable, and were willing in effect to stretch the notion of "high crimes and misdemeanors" to include it and remove him.

But the Pickering case is exceptional for that very reason. One thing most American impeachment cases have in common in the House is concern about the law. Strong indication of this comes from the Johnson case itself: These were arguably the worst relations between a president and Congress ever. But it is almost certainly wrong to say that just anything could have served as the instrument with which the Republicans would seek to remove Johnson. The fact is, the House voted as a whole twice on whether to impeach Johnson. The first time was December 7, 1867. The vote *failed*, 108-57. Sixty-six Republicans voted "no." As Eleanore Bushnell notes in *Crimes, Follies, and Misfortunes: The Federal Impeachment Trials* (1992): "The failure to impeach is surprising, considering the antagonism Johnson had stirred. He had not, however, violated any law, and for that reason even some of his committed foes backed away from impeaching him." The House voted to impeach only after Johnson fired Stanton. Here was a clear violation of the Tenure of Office Act, in the view of House Republicans. Far from being incidental, the act was essential to impeachment, and the participants at the time understood its supposed violation to make the difference between a majority in opposition to impeachment and a majority in support.

The Senate disagreed — or perhaps one should say, in the Johnson case, that a sufficient number of senators disagreed to allow Johnson to stay in office. The tenure act had passed over the president's veto; therefore, two-thirds of the Senate had voted in favor of it. But a similar supermajority in the Senate was not willing to enforce its encroachment on the executive's removal powers by removing a president who had flouted it in this case.

Now, as it happens, the House managers' case against Johnson was murky on more than one point. It is doubtful, for example — or at least it takes a somewhat expansive reading of the tenure act to conclude — that it actually applied to Stanton, who was appointed during Lincoln's term. (One issue came down to what the meaning of "term" is. Was Johnson finishing

Lincoln's term or did he begin his own term upon taking the oath of office?) A major part of the president's defense in the Senate trial consisted of his contention that because both he and his Cabinet believed the Tenure of Office Act was unconstitutional and wanted to subject it to a court challenge, it was proper for Johnson not to enforce it in relation to Stanton's appointment. (Here, the oddity is that Johnson initially complied with the act, by suspending Stanton and submitting Grant's name to the Senate — perhaps not the actions of a man testing a principle.) One defender argued that perhaps the president had run afoul of the act — an unconstitutional act, to be sure — but that if so, his actions hardly rose to the level of "high crimes and misdemeanors." Bushnell also notes: "The president's counsel had experienced no discomfort in acknowledging, at an earlier time, the disreputable tone of Andrew Johnson's speeches nor in acknowledging the possibility that his political positions could be considered abominable. But they held steadily to their course that distasteful conduct or unpopular policies did not fit the constitutional model of impeachable acts."

The House managers' case against Johnson was murky on more than one point.

These various contentions were sufficient to persuade the seven recusant Republicans to join all 12 Democrats in finding the president not guilty. Bushnell notes: "The six recusants who filed for posterity the reasons for deserting their party did not make a strong case for Andrew Johnson. Instead, all reported they believed as a matter of judgment and conscience that offenses they considered impeachable had either not been charged or had not been proved." William H. Rehnquist, in *Grand Inquests: The Historic Impeachments of Justice Samuel Chase and President Andrew Johnson* (1992), a study the chief justice of the United States published seven years before he was called upon to preside over the Senate trial of President Clinton, noted: "When all the evidence was in, and the arguments of lawyers on both sides concluded, the essence of the case turned on the Tenure of Office Act." Of the six statements issued by recusants, Les Benedict observes, "five of them turned on the disputed point — whether Secretary of War Stanton had been covered by the Tenure of Office Act. They concluded that the act did not protect him from removal without the Senate's consent."

In both of our presidential impeachments and acquittals, partisan division between the White House and Congress combined with questionable presidential conduct have been necessary conditions for impeachment — but not sufficient conditions. There have, after all, been other instances of deep partisan division; 13 presidents have faced a Congress controlled in both chambers by the opposition party. (This list does not include Johnson.) Nor is our history short of questionable presidential conduct. But another necessary

condition for impeachment has been a law at odds with the previous (and subsequent) understanding of the proper separation of powers. And acquittal has depended largely on a repudiation in the Senate of the intrusion of these laws.

Chase and sedition

It is not only presidents with whom Congress has sometimes quarreled. Judges have also been on the receiving end of congressional ire. But here, too, in two cases of impeachment and subsequent acquittal, the pattern is the same: a judge and a Congress at political loggerheads; at best, questionable judicial conduct by the judge; and a constitutionally dubious law at the center of the proceedings.

Justice Samuel Chase was an ardent Federalist appointed to the Supreme Court by President Washington. The character of his actions and statements in public, especially outside the courtroom, was more or less the opposite of the reticent, apolitical affect we expect from judges today. Chase campaigned for Federalist candidates, advocated Federalist causes, and denounced the Republican opponents of the Federalists as a danger to the young republic.

Needless to say, he was hardly a revered figure when Republicans took control of the White House and Congress in 1801. The Jeffersonian party was further enraged by the slew of Federalist judicial appointments rushed through by the departing President Adams. Many Republicans believed the Federalists sought to retain control of the government through their hold on the judiciary.

Some Republicans saw the impeachment of Chase as the first in a string of potential impeachments, by which they might gain a toehold in the judiciary. Their partisan motives were not in doubt. Likewise, of Chase, as Bushnell writes, "That he was impetuous, arrogant, and overbearing is well-documented." His contemporary on the bench, Judge Richard Peters, noted Chase's "singular instinct for tumult." Stephen B. Presser in *The Original Misunderstanding: The English, the Americans and the Dialectic of Federalist Jurisprudence* (1991), a revisionist work largely in sympathy with Chase, notes his facility for "building a circle of enemies."

When the collision with Congress came, its essence was a fight over the Sedition Act, which provided for the prosecution of seditious libel — false statements injurious to the government. Chase, riding circuit and presiding at trials, in the practice of the day, was a zealous champion of the law, and he seemed to relish enforcing it against outspoken Republicans. While in its earliest years, the durability of the American republic and the government created by the Constitution were open questions, and the threat to both in the form of such events as the Whiskey Rebellion was taken very seriously, the Federalist insistence on criminalizing certain political speech leaves a

constitutional bad taste now, and for Republicans did at the time. Quite reasonably, if Federalists distinguished between statements injuring the government and statements damaging to the Federalist cause, it was lost on the Republicans. One of the charges against Chase was that he would not allow challenges to the constitutionality of the Sedition Act in his court.

The House impeached Chase in 1804 and the Senate acquitted him in 1805. The essence of the case against him was his abuse of power as a judge. In the words of manager George W. Campbell, Chase acted to "oppress, under the sanction of legal authority, those who became the objects of his resentment in consequence of differing from him in political sentiments."

The essence of the charge is that, under cover of the Sedition Act, Chase became more than a judge: rather, an oppressor, something more in the nature of lawmaker, prosecutor, judge, jury, executioner. In *Constitutional Construction: Divided Powers and Constitutional Meaning* (1999), Keith E. Whittington describes Chase's conduct as an effort to incorporate the common law into the activities of the federal judiciary: "The early sedition prosecutions typified the perceived abuses inherent in the criminal common law. Not only did such prosecutions tend to entangle the judiciary with the executive as prosecutor and judge were drawn together to initiate, define, and execute the criminal prosecutions, but they also placed judges in the role of legislators in an area directly affecting personal liberty." The specific charges in essence lay out the terms by which the House supposed Chase had asserted constitutional powers he did not possess — an incursion into either the powers of others or the just power of no one.

But Chase and his team of defenders admitted to no such abuse on any of the charges. Chase may have been zealous, and he likewise may have been sharp with those whom he regarded as foolish, they said, but at no time did he exceed his authority as a judge. A hatred of prosecutions under the Sedition Act should not lead to condemnation of the judge sitting at trial. To conclude otherwise would risk doing damage to the independence of the judiciary — a different sort of injury to the separation of powers. The nine Federalist senators, none of whom deserted Chase, argued against what they saw in no uncertain terms as a partisan attack on judicial independence. In the end, Chase was acquitted by a majority vote of the Senate on eight of the articles, and on the other three, the number in favor of removal didn't come close to crossing the two-thirds threshold. But his trial was a showcase for the abusive character of the now-expired Sedition Act.

Peck and contempt

FINALLY, there is the case of Judge James H. Peck, an 1830-31 impeachment and acquittal. President Monroe had appointed Peck to the bench in 1822. In 1828, the Democrats swept to power. That met the condition for partisan conflict.

Peck was judge in Missouri in a series of land claim cases in the territory of the Louisiana purchase. The law was complicated, the interests involved huge. In the first such case, in 1825 (the account here draws mainly on Bushnell's in *Crimes, Follies, and Misfortunes*), Peck ruled against the client of a lawyer named Luke Edward Lawless. Because of the high degree of interest in the case, Peck published his ruling in a St. Louis newspaper in 1826. Shortly thereafter, a detailed rebuttal of Peck's ruling appeared in another newspaper under the byline, "A Citizen." Peck was furious at the attack. He believed the "Citizen" rebuttal, in addition to its flawed legal reasoning, was replete with errors and misrepresentations of his ruling. Lawless's authorship soon became known.

Bushnell writes:

> Peck held the letter to be a contempt of court, sentenced Lawless to twenty-four hours in jail, and suspended him from practicing in federal court for eighteen months [a serious blow to Lawless's livelihood as a lawyer specializing in land claims before the federal courts]. As the basis of the contempt ruling, Peck found that Lawless acted "with intent to impair the public confidence in the upright intentions of said court, and to bring odium upon the court, and especially with intent to impress the public mind, and particularly many litigants in this court, that they are not to expect justice in the cases now pending therein."

Lawless felt he was entirely within his rights to criticize a published decision and saw the contempt ruling as a tyrannical affront to the Constitution. He began a long crusade against Peck that ultimately led to impeachment nearly five years later on one article dealing solely with the judge's treatment of Lawless. The article accused Peck of acting "to the great disparagement of public justice, the abuse of judicial authority, and to the subversion of the liberties of the people of the United States." James Buchanan, who went on to be elected president in 1856, was chairman of the House managers.

Peck maintained that his contempt ruling was within his powers as a judge, and his defenders argued that even if it went too far, Peck did not, as the article alleged, act with bad intent, believing that he possessed sufficient authority for his actions. At a minimum, however, it seems fair to say that Peck's actions from the bench were harsh enough to meet the test of genuinely dubious conduct.

Peck was acquitted with 21 votes in favor of removal and 22 against. Where was the abuse of the separation of powers here? In this case, not in the statute books but in the common law — the precedents Peck relied on to hold Lawless in contempt and to sentence him harshly. As Bushnell observes, Peck's defenders "sought to refute the charge of abuse of the contempt power by citing English and American precedents supporting the authority of courts to punish for contempts like Lawless's." The House tried to hold his conduct to the standard of its more circumscribed view of judicial contempt powers. The Senate was not willing to rely on the House's assertions

to the extent necessary to remove Peck.

But the Senate, like the House, can hardly be said to have found Peck's conduct salutary. Both chambers amply demonstrated this by approving, within a month of Peck's acquittal, legislation introduced by Buchanan restricting contempt findings in federal courts roughly along the lines of the terms the House managers had unsuccessfully tried to apply in Peck's impeachment. Contempt could be found in misbehavior in a courtroom or close enough to it to disturb its proceedings; or in misbehavior in such business of the courts' as filing motions and briefs; or in the failure to obey a lawful court order. It could not be found in a newspaper rebuttal to a court's decision. Buchanan's legislation governs contempts in federal courts to this day.

Lasting meaning

IMPEACHMENT FOLLOWED BY acquittal is traumatic, necessarily the stuff of national drama. When one looks back on such cases, even from the vantage of little more than a year, the first impulse is to revisit the question before the Senate: Should he or shouldn't he have been removed? The answer to that question is often thought to contain the answer to an underlying question: Should he have been impeached in the first place?

There is certainly nothing wrong with such exercises. But the approach does invite a sort of all-or-nothing view of the issues involved. It does not do justice to the historical richness and the lasting meaning of these impeachments and acquittals. Better to take these "grand inquests" for what they really are — times at which great issues about how government works, and therefore how we should govern ourselves, come to the fore.

The Clinton impeachment and acquittal were rich in both regards. The facts about Clinton's misconduct in trying to conceal his relationship with Monica Lewinsky were stubborn and damning. No president should do what Clinton did, and his name will forever bear the mark of impeachment for it. Yet it would have been impossible to remove Clinton without simultaneously vindicating the process by which he came to stand trial in the Senate — which is to say, without vindicating the House's deference to and reliance on independent counsel Kenneth Starr's investigation, the conduct of the Starr investigation in all its particulars, and the authority for the investigation, the independent counsel statute itself. And it is noteworthy that within the year, the statute was gone, bringing to an end its 20-year disfiguration of our political system.

President Johnson's determined efforts to stretch his powers to an extreme in order to thwart the Reconstruction Congress were offensive — as, indeed, was his obsequiousness toward the South. Yet it would have been impossible to remove Johnson without vindicating the Tenure of Office Act and its

assertion of congressional authority over the president's ability to remove officials. Two decades later, Congress would at last abandon that claim to authority, and 40 years after that, the Supreme Court would lay it to rest once and for all.

Justice Chase was political in a manner wholly unbecoming a judge and had a view of jurisprudence that expanded the role of judges beyond the bounds established in the American Constitution. Yet it would have been impossible to remove Chase without denying his claim to the authority he asserted from the bench, even if that claim did derive from the dubious and discredited Sedition Act, with its invitation to judges to act as lawmakers and prosecutors. The Sedition Act had already gone by the boards at the time of the Chase impeachment, and the judiciary was thereafter reluctant to assert executive powers so sweeping.

Judge Peck, personally slighted, gave vent from the bench to an intolerable view of press freedom. Yet, once again, it would have been impossible to remove Peck without denying him his claim to his contempt authority, even if that claim derived most of its legitimacy from precedent that had gone largely unexamined in the light of passage of the federal Constitution and its protections of individual liberty. It took no more than a month for the government to correct the problem posed by Peck's broad assertions with the passage of a law governing contempt.

In these four historical cases, impeachment followed by acquittal has been a messy and partisan process, offering numerous invitations to rhetorical excess, and reducing the decision to a binary choice when "guilty" and "not guilty" have not begun to do justice to the issue. And while, in the end, these impeachments and acquittals have maintained the status quo, they have done so only after bloodying everyone who was party to them.

It is wrong to turn a blind eye to behavior that truly does call into question an official's fitness for office. Yet in some cases, such as these, the removal of such an official would do a wrong as well. So it is that impeachment followed by acquittal is sometimes absolutely necessary — because in some cases, nothing else suffices to repair a rip in the magnificent tapestry of separation of powers that is the hallmark of American government.

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F. A. Hayek, "Why I am not a Conservative,"
The Constitution of Liberty (1960)

The President of the Mont Pelerin Society, Dr. Rámon Díaz, notes that students of Hayek cannot ignore the single definition of his political philosophy which Hayek bequeathed to us. What can we learn from Hayek's self-definition as an Old Whig? With what values did he identify and reject by it? Is there any alternative definition more accessible to the general public?

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"High Crimes" After Clinton

Deciding What's Impeachable

By KEITH E. WHITTINGTON

NO ONE IS PARTICULARLY HAPPY with the impeachment of President Clinton. For many liberals, the impeachment was a dreadful mistake. The eventual acquittal of the president by the Senate could only partly compensate for the disquieting and dangerous actions of the House. For many conservatives, it is the outcome of the impeachment trial that is problematic. For them, the frustration that built as the Senate ground toward an acquittal was captured in William Bennett's famous question, "Where's the outrage?" The standard media narrative, reinforced by the allies of the White House, that cast the impeachment in terms of partisan electoral calculation further eroded faith in the process.

In the long run, such varied disappointments are likely to fuel a reevaluation of the impeachment power itself. The impeachment has already produced some legislative fallout, notably the unlamented expiration of the independent counsel statute. The constitutional text is not so easily changed. But post-impeachment evaluations will be crucial in determining how future generations of politicians and citizens interpret the Constitution's vague standard of impeachable offenses. The outcome of the impeachment and trial had one immediate and clear consequence: Bill Clinton was able to

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retain the presidency. The longer-term consequences of the impeachment, however, will depend on what constitutional and political lessons are drawn from it.

Unsettled constitutional law

IMPEACHMENTS DO NOT FORM clear precedents, as court cases do. Congress does not respect the judicial doctrine of stare decisis. Congressmen and senators are not obliged to agree upon a single opinion elaborating the principles underlying the impeachment that might guide future impeachment inquiries. The outcome of the trial itself does not provide decisive evidence of the rules governing the decision. Was Clinton's acquittal evidence that the charges made by the House did not rise to the level of impeachable offenses, or does it merely mean that recognizable impeachable offenses were not adequately proven? The constitutional law of impeachment remains as unsettled after the Clinton episode as it was before.

The constitutional and political implications of the impeachment are still up for grabs, however. The case of the only previous president to be impeached, Andrew Johnson, is instructive. Generations of scholars, journalists, and politicians have fought over the significance of the Johnson impeachment and acquittal, and these arguments were driven by contemporary concerns. How the Johnson impeachment was remembered was understood to have important implications for ongoing political debates.

In the postbellum period, Northern elites were unapologetic about the impeachment of the Southern-sympathizing Johnson, and in the era of "congressional government" the impeachment threat was implicit. When "waving the bloody shirt" was a winning political strategy, Republicans had much to gain by portraying Johnson as a reactionary Southerner and the impeachment of 1868 as a success. At the end of the nineteenth century and in the early decades of the twentieth, as Jim Crow was being constructed and defended, a dominant group of historians took a dim view of Reconstruction and the Radical Republicans who supported it. In books with titles such as *The Tragic Era*, these historians led a scholarly and popular reevaluation of Andrew Johnson and his impeachment. They tended to portray Johnson as a lonely defender of the Constitution and social order and the impeachment as part of a revolutionary putsch by wild-eyed radicals.

Beginning with the New Deal and the Roosevelt administration, scholars found a new reason to denounce the impeachment, as a threat to presidential power and the separation of powers. Louis Brownlow, the virtual architect of the post-New Deal modern presidency, denounced the Johnson impeachment as an effort to overthrow the executive branch and establish a parliamentary government. This spin on impeachment became an object of faith and was repeated by writers and politicians, from Harry Truman to

John F. Kennedy. Johnson may have made tactical political mistakes, but the impeachment of a president was unthinkable and constitutionally dangerous. Unsurprisingly, allies of the Clinton White House resurrected this version of the Johnson episode, and old copies of *Profiles in Courage* were dusted off to encourage Democratic congressmen to rally around the presidency.

Academic commentary on the impeachment since the 1960s has been distinctly less critical, however, as the racial egalitarianism of the First Reconstruction was embraced and enchantment with presidential power waned. The presidential impeachment became an unfortunate but necessary aspect of the postbellum struggle to secure black civil rights. By the early 1970s, a new scholarly consensus had formed: Presidential impeachments could be a good thing, if the cause was just.

The passions that fueled the debate as it unfolded will probably guide the early exercises in interpretation.

A politically influential consensus view of the meaning of the Clinton impeachment is also likely to develop. But that is likely to take time, and as in the Johnson case, is likely to be subject to change over time. In the meantime, the passions that fueled the debate as it unfolded will probably guide the early exercises in interpretation. For those who attacked the president, the bitter conclusion is that he got away scot-free with conduct that should have resulted in his removal from office. For his defenders, the conclusion is that the impeachment should never have gone forward. Because of the acquittal, the latter will surely be the dominant view.

Over the next few years, legal scholars and others will likely attempt to reinforce their original judgments of the Clinton impeachment. In this case, academics made their preferences known in the highly publicized "letter of the 400 law professors" and "letter of the 400 historians," which came down strongly in favor of a narrow interpretation of the impeachment clause. In congressional testimony, CUNY historian Arthur Schlesinger Jr. warned against a creeping parliamentarianism and Princeton historian Sean Wilentz threatened Republican congressmen with historical infamy if they cast their votes in favor of impeachment.

Leading liberal constitutional theorists like Cass Sunstein and Ronald Dworkin have been explicit on the need for a new political and cultural consensus that would prevent anything like the impeachment of Bill Clinton from happening again. In the midst of the impeachment inquiry, Sunstein fretted that the "impeachment of President Clinton may signal more frequent resort to the impeachment mechanism," which he found particularly serious given the "central modern role of the American President."

To resist that possibility, Sunstein insisted that impeachments be limited to "a narrow category of egregious or large-scale abuses of authority that

comes from the exercise of distinctly presidential powers. . . . In the current period, it is more, not less, important to insist on this particular understanding of the Impeachment Clause." More heatedly, Dworkin called the impeachment "a constitutional disaster" and contended that the "only check on Congress's impeachment power . . . would be a broad understanding" that the power can "be used only in an emergency." What is needed is a "consensus that impeaching a president on the kinds of grounds the House cited is a crime against the Constitution; otherwise we cannot be confident that a president less popular or less successful than Clinton will not be impeached by partisan zealots, on equally improper charges, in years to come."

But it seems unlikely that over time, as the passions of the moment cool, the basic lesson of the Clinton impeachment will be one of constitutional failure. Although there were aspects of the process that could clearly have worked better — from the House's handling of the Starr referral to the Senate's truncation of the impeachment trial — the impeachment and trial neither stretched the boundaries of traditional constitutional understandings nor exposed dangerous weaknesses in our understanding of the meaning of impeachable offenses. The course of the Clinton impeachment does not suggest the need for a serious reevaluation of the impeachment power.

Although it is always tempting to refight the old battles over again, we would be better off avoiding the temptation to gerrymander the definition of impeachable offenses to either include or exclude Clinton's actions. A key virtue of our historical practice under the impeachment clause is that we have maintained its flexibility for the future. Our next impeachment is unlikely to be any more analogous to Clinton's than Clinton's was to Nixon's or Johnson's. We would be better off thinking about the underlying purposes of the impeachment clause than attempting to draw up new lists of impeachable offenses.

Three misunderstandings

In thinking specifically about the Clinton case, it is worth putting to rest three basic misunderstandings. First, the acquittal of the president in the Senate trial does not necessarily mean that the impeachment failed or was misguided from its inception. The winner-take-all perspective of ordinary legal trials or political elections is misplaced in the context of an impeachment. The retention of office does not mean that you "won," though losing your office is, of course, pretty definite evidence that you "lost." In many cases, removal is the entire point of an impeachment. There is no larger meaning to the process; the goal is simply to remove an individual from a position of authority who has become incapacitated or proven himself corrupt. In the most interesting cases, however, the impeachment of an individual is intended to send a message and not only to the tar-

geted individual. That message can be clearly delivered even without a conviction.

More is at stake in high-profile impeachments than a single individual's career. In British history, the House of Commons often used the impeachment device as part of its power struggle with the monarchy. Executive officials, unaccountable through electoral means, could be checked by the threat of impeachment. Often in such cases, the impeachment itself was sufficient to effect the desired change of behavior and the Commons did not even bother prosecuting the case in the House of Lords, where conviction would be uncertain in any case. In the American context, impeachments have also been used as a deterrent to executive and judicial misconduct. The mere fact that a majority of the members of the House of Representatives regards an official's behavior as sufficiently egregious to forfeit his claim to office sends a powerful message that the specified conduct is politically costly and constitutionally questionable. In such cases, the ultimate success and lessons of the impeachment can be seen in the behavior of government officials, not in the verdict of the trial or the subsequent frequency of impeachments. A successful deterrent need not be used often.

More is at stake in high-profile impeachments than a single individual's career.

Second, the impeachment of Clinton was not an abuse of the process. The motives of politicians are rarely pure, but no federal impeachment in American history has been wholly unjustified. Contested impeachments, such as those of President Clinton, occur at the margins of consensus opinion, where reasonable people can differ. Outside the heat of the moment, it is clear that the president's conduct was both serious and wrong. It is less certain whether those are the types of actions that justify the removal of a sitting president from office. The members of Congress who voted for the president's impeachment and removal could reasonably believe that they did justify his removal, and there is little reason to believe the president's critics acted without regard for basic constitutional values. The impeachment was neither a "kind of coup," as Ronald Dworkin asserted at the time, nor an act of constitutional infidelity by an embittered legislative majority. It was a debatable, but reasonable, effort to reaffirm basic assumptions about how presidents should conduct themselves in office.

Finally, the Clinton impeachment did not represent a crisis of partisanship. It is understandably disquieting to witness a bitter break between the two parties and a strongly partisan vote on a measure as momentous as a presidential impeachment. Nonetheless, there is no reason to expect impeachments to be bipartisan affairs, and there are many reasons partisanship should not be regarded as debilitating. Of course, the Founders did not foresee the growth of political parties and how they would come to structure

national politics. Nonetheless, they had no illusions about the divisiveness of politics. Parties reflect both fairly mundane divisions of interest and fundamental divisions of principle. The Founders expected that divergent interests would tear their new republic. They hoped that there would be little disagreement about basic principles. They were wrong. American politics has been periodically torn over basic disagreements about political principles, both small and large.

Impeachments are one mechanism for establishing and enforcing political principles in government. At times, impeachments reaffirm consensus values. The bipartisan removal of jailed federal judges simply reaffirms what we all knew already. The bipartisan denunciation of Richard Nixon in the waning days of the Watergate scandal expressed a new appreciation of the need for limits on what presidents may do in the name of national security. At other times, impeachments establish new operating values about which there was no previous consensus. Partisan divisions reflect both lingering disagreements about weighty substantive issues and transitory calculations of political interest. It is not uncommon for congressional members of the party of the defendant to vote against an impeachment even as they verbally distance themselves from the behavior in question. Even as the Jeffersonians split their votes over the impeachments of Justice Samuel Chase and Judge John Pickering, the Federalists were united in voting for acquittals for fear of whom the president would nominate to replace them. Likewise, Democrats were unanimous in voting against the impeachment of Johnson, even as Republicans divided in both the House and the Senate. And Republicans did not defect en masse from the Nixon presidency until the last days of the crisis, when the final lies were exposed and Nixon had become a political liability to the party. Partisan divisions at the time of the vote need not lessen the substantive lessons about appropriate political conduct that emerge out of impeachments.

Impeachable in what context?

In the debates preceding the Clinton impeachment, and in its aftermath, a number of efforts have been made to more closely define the Constitution's specification of impeachable offenses as treason, bribery, and high crimes and misdemeanors. The vagueness of the "high crimes and misdemeanors" standard almost tempts us to try to codify a list of impeachable offenses or a standard of official conduct that could guide and constrain future impeachment inquiries, perhaps modeled on the standards of judicial conduct that many states have adopted to discipline their judges. In their struggle with Andrew Johnson, the Republicans included a clause in legislation directed at the president that its violation would constitute a "high misdemeanor." Of course, such legislative language hardly made the Johnson impeachment less controversial. Formal efforts to speci-

fy constitutionally appropriate conduct are likely to seem trite in the new context of an emergent scandal and impeachment debate.

Such exertions also tend to underestimate the historical variability of political misconduct. Supreme Court Justice Samuel Chase was impeached in 1804 primarily for delivering partisan harangues from the bench and for his earlier questionable handling of a set of politically charged treason and sedition trials just prior to the 1800 elections. Although modern commentators generally condemn his conduct, it is hard to imagine a modern federal judge being impeached for taking similar actions. Outside the context of a large-scale dispute over the role of the judiciary in American politics, Chase-like misbehavior on the part of an isolated judge is unlikely to provoke serious impeachment efforts. Although Andrew Johnson's actions were widely reviled at the time, they would be unremarkable, or at most subject to mild censure, in the twentieth century context. "Obstruction of justice" has a different political resonance outside the context of the Nixon presidency and Watergate. Even Hillary Clinton once thought the charges against the president "would be a very serious offense" if they proved to be true. Context matters. Offenses that seem either impeachable or benign in the abstract, or in a different period in American history, can take on a very different cast within a particular political setting. By refusing to write a comprehensive list of impeachable offenses into the Constitution, the Founders preserved a vital flexibility in the constitutional scheme.

The effort to transform the Constitution's requirement of high crimes and misdemeanors into a finite list of impeachable offenses tends to misdirect the constitutional and political inquiry away from what is most important: the justification for removing an officer of the federal government of the United States. The constitutional text does not establish a clear trigger for the impeachment and removal of the president. In the end, congressmen will not be able to return to their constituents and point at an undisputed constitutional code of impeachable offenses. In order to build public support for an impeachment and faith in the process, they will have to be able to offer substantive explanations for why particular actions were constitutionally wrong and a given official should be removed from office before the natural expiration of his term.

Reasons to impeach

In identifying impeachable offenses, the focus ought to be on why we would want to impeach. The answer to that question is necessarily rooted in specific cases. Nonetheless, we can identify a few general principles that can justify an impeachment. The clearest reason for making use of the impeachment power is in the case of an immediate danger to the republic. The problem is raised by the Founders' decision to adopt fixed terms of office for the principal government officials. An inde-

pendent executive and judiciary mean that the president does not have to face a parliamentary vote of confidence and the chief executive cannot be fired. We are stuck with the president for four years and with judges for their natural lives, regardless of how bad or even dangerous they turn out to be. The impeachment power provides a safety valve in case presidential incompetence or malevolence becomes so great that we cannot as a nation afford to wait until the next election to remove him.

The two impeachable offenses that the Founders did identify in the text, treason and bribery, tend to fall into this category. If the commander in chief refused to call the army into the field to resist an invasion by a foreign power, he would have to be removed at once. If the president absconded to a foreign shore and refused to perform the duties of his office, an impeachment would be necessary to provide a new head of state.

The nation is strong enough to survive most acts of misconduct until the next election.

It is harder to identify actual cases in which government officials pose such an immediate danger to the nation as a consequence of their continuing to hold office. A few judges may have fallen into this category. The Federalist judge John Pickering was slowly descending into madness and alcoholism, resulting in increasingly incoherent decisions on the bench, forcing the Jeffersonians to remove him. Justice Samuel Chase's intemperate and partisan rant in seating a grand jury could plausibly have been interpreted as a precursor to more vigorous efforts by the justice to frustrate federal policy or even disrupt the workings of the government. Judge West Humphreys of Tennessee refused to resign from the bench even though he had joined the Confederate government at the outbreak of the Civil War and was no longer carrying out his judicial duties — at least not for the Union. He was removed from office by a unanimous vote in 1862. President Johnson's executive efforts to block congressional Reconstruction and his vocal encouragement to Southerners disposed to resist Reconstruction could have been construed as posing an immediate threat to the continued well-being of the nation, especially in a capital filled with rumors of a renewed outbreak of hostilities or even a coup d'etat. In most of these cases, the judgment that these particular individuals were a clear and present danger to national security would be at best controversial. But a basis for such a judgment did exist in these cases, and impeachment advocates could have justified their actions in those terms. The goal of such an impeachment would be specific and limited — to remove a particular individual from office before he can do any further damage to the nation.

Fortunately, few government officials and few individual actions can really pose that kind of threat to the nation. The nation is strong enough to survive most acts of misconduct and incompetence until the next election (and

most officials have had the good sense to resign when their continued presence in office threatens to paralyze the government).

Lesser offenses, different purposes

IMPEACHMENTS ARE JUSTIFIED not only in such cases of immediate and continuing threats to the nation, however. The more common justification for an impeachment turns on rather lesser acts of misconduct. As the individual offenses become less severe, however, the purpose of the impeachment also begins to change. In such lesser cases, impeachments serve important deterrent and educative purposes. The goal of the impeachment is to send a message to other and future officeholders and the American public, as much as it is to incapacitate a particular government official before he does more irreparable harm. Such impeachments are forward-looking and focused on the operation of the political system as a whole. The actions of a particular individual become impeachable as a consequence of these broader, systemic considerations.

Two types of justifications for impeachments fall into this category. First, impeachments can be warranted by the abuse of office. One goal of such an impeachment is, of course, to stop the abuse itself. Removing the individual in question from government office will accomplish that goal, but often the mere impeachment is itself sufficient to check individual misbehavior. Once official misconduct has been exposed and censured through House impeachment, abusive officials have generally either altered their behavior or resigned their posts.

Judge Mark Delahay resigned in 1873 rather than face a Senate trial on charges including regular intoxication on the bench. Secretary of War William Belknap rushed to the White House to resign before his impeachment for accepting bribes in 1876. In 1926, Judge George English resigned during his Senate trial on corruption charges. Many other judges resigned in the midst of House impeachment inquiries, as did President Nixon. Other officials, including Chase and Johnson, who were acquitted in their Senate trials, nonetheless came to recognize the inappropriateness of their behavior and mended their ways. Such abusive officials may not present an immediate danger to the survival of the republic, but they nonetheless have misused their offices, and congressional impeachment has been an effective mechanism for checking those abuses.

More significant than the immediate problem of a single abusive official, however, is the possibility of similar abuses by others. From the individual perspective, impeachments have sometimes served to "punish" officials for actions that they have taken in the past. The abusive behavior may have already stopped, and an impeachment is hardly necessary to stop ongoing abuses. Most of the charges against Chase focused on his actions before the election of 1800. Judge James Peck was impeached in 1826 over a single

questionable contempt citation. Robert Archbald's 1912 impeachment stemmed from his misconduct in a prior judicial post. Likewise, the judicial impeachments of the 1980s all involved isolated events that had long since been exposed and resolved in legal proceedings. If punishment is the only issue, then Clinton-like claims that officials can be held accountable through ordinary legal proceedings without the need for an impeachment have resonance.

The value of these impeachments was not that they stopped ongoing abuses of office or punished individual officials for past misconduct, but that they sent a message to other officeholders and to citizens that such behavior is unacceptable. The impeachments emphasized the availability of mechanisms to punish misconduct by high government officials, notably including judges. The fact that a judge might lose his office, even if he can escape criminal indictment and conviction, serves as a deterrent to such misconduct.

Equally important, impeachments can help clarify what the appropriate standards of conduct are.

Equally important, impeachments can help clarify what the appropriate standards of conduct are and symbolically cleanse the government of wrongdoing. Justice Chase, for example, was impeached by the Jeffersonians primarily for his aggressive partisanship both on the bench and off. Chase was among the most persistent and notorious in his actions, but he was hardly alone. Many in the Federalist Party regarded Chase's actions as not only appropriate for a federal judge but laudatory. Chase's impeachment forced an explicit discussion of the appropriate role of an unelected judiciary in a republican system of government. The Jeffersonians made it clear that the courts were not to be used as weapons in partisan conflicts. Chase kept his office, but no one thought he had been vindicated. Federal judges gave up the practice of using their powers to influence elections, and the justice's remaining years on the bench were unremarkable.

Similarly, President Andrew Johnson was impeached in 1868 after a lengthy struggle with Congress over the proper course of Reconstruction and the president's role in the determination of federal policy. Lincoln's successor aggressively used his powers to resist and subvert congressional policy, while taking to the stump to try to rally the voters to his side. Some of his actions were unprecedented. Others were aggressive extensions of what previous presidents had done. In the aftermath of a civil war and in a period in which democracy was equated with legislative parties, Johnson's actions were seen as threatening the very roots of republican government and the continuation of the national peace. Johnson's firing of his holdover secretary of war, in violation of procedures laid out in a recent federal statute, brought the conflict between the president and the Congress to a head. Johnson's

actions as president were unremarkable by twentieth century standards, when presidents are expected to be popular and policy leaders, and modern critics of his impeachment have found it hard to credit the constitutional vision set forth by congressional Republicans at his trial. But in the nineteenth century context, his impeachment sent an unmistakable message that the presidency was to return to its prewar dimensions and Congress was to remain the center of policy making and party building in the national government. Individuals such as Chase or Johnson are sometimes caught in the transition — though there were ample warnings that the climate of opinion was shifting. Their impeachments were political events designed to influence a larger political audience.

Bad conduct

A FINAL JUSTIFICATION for impeachment is the inconsistency between the actions of an individual and the expectations of the office that individual holds. Like cases of abuse of office, these impeachments are concerned both with stopping an ongoing harm to the nation and with sending a message to other political actors. Unlike cases of abuse of office, however, the concern of these impeachments is with how an individual conducts himself in office rather than with how the individual uses his office. Officeholders can abuse their position of trust and authority not only by turning the government powers with which they have been entrusted to improper ends, but also by subverting the stature of the office itself. "Private" behavior can cause very public harms when it calls into question the symbolic meaning of the office that the individual occupies and affects his and others' ability to conduct public business.

A wide range of behavior can create a basic inconsistency between the actions of a government official and the expectations of the office. Moreover, the expectations of the office depend on the particular post that an individual holds. Judges Pickering and Delahay were not using their office for private gain when they regularly appeared drunk on and off the bench. Their legal decisions may even have been correct on the merits. Their public intoxication, however, created an overwhelming appearance of impropriety that necessarily led individual citizens to question whether justice was being done in cases before the bench. It is not the outcome of the judicial proceedings that was in question in these cases, but the basic dignity of the office that helped sustain its effectiveness and the legitimacy of the government as a whole.

Similarly, one of the charges against Justice Chase focused on his "stooping to the level of an informer" in encouraging a grand jury investigation of a newspaper publisher who had criticized Chase's own behavior. The grand jury did not indict the publisher, and given the legal environment of the time, such charges could have had merit. But Chase's actions raised questions

about his judicial temperament and character and raised public doubts about his handling of other cases.

The unofficial conduct of a government officer can be just as damaging to the integrity of the office as his official conduct. In the very first impeachment, Sen. William Blount was tried for conspiring with Great Britain to take over Spanish territory in Florida and Louisiana. Blount perhaps traded on his status as a United States senator, but he did not abuse any of his official powers as a member of Congress. Nonetheless, his actions undermined the Senate, and he was promptly expelled from Congress and subsequently impeached in order to bar him from holding future federal office. More recently, Judge Harry Claiborne and Judge Walter Nixon were impeached and removed from office for income tax evasion and lying to a federal grand jury, respectively. Neither charge stemmed from their official duties as judges, but both offenses were seen as rendering these individuals unfit to continue acting in the role of a federal judge. An official charged with sitting in judgment of the illegal behavior of his fellow citizens could not himself be guilty of serious criminal infractions.

Judgments about what types of activity might be inconsistent with wielding public authority are likely to vary over time.

More tendentiously, one of the charges against President Johnson referred to his various public speeches attacking Congress, the Republican Party, and government policy. In responding to the charge, Johnson asserted that his actions were unimpeachable. The president had the same free speech rights as every other American citizen. Congressional Republicans correctly noted that the president was not in the same position as any other American citizen. A demagogic and rabble-rousing president raised unique dangers to the stability of the government. Johnson's "private" actions on the stump had serious public consequences, including implications for the stature of the presidency as a constitutional office. Presidential conduct was always public conduct, even if it did not make use of the resources of the executive office.

Recognizing a legitimate concern with the stature and dignity of office provides a larger principle that makes sense of our intuition that "heinous" criminal activity by a sitting judge or president must be impeachable, even if it does not involve an abuse of their public functions. Unfortunately for the defenders of the current president, such concerns cannot be easily limited to a handful of particularly egregious felonies such as rape or murder. They cannot even be limited to violations of the criminal code. Even unindictable behavior by a sitting president may render him unfit to continue to hold such a high office.

Judgments about what types of activity might be inconsistent with wielding public authority, however, are likely to vary over time. In an era in which

sitting presidents were expected to remain scrupulously above the partisan fray, Johnson's emotional speeches urging voters to throw his congressional foes out of office were scandalous and seemingly dangerous. In the modern era of explicit presidential partisanship and permanent campaign fundraising, even renting out the Lincoln Bedroom in exchange for campaign contributions may seem merely distasteful. On the other hand, public expressions of virulent racism would call into question a contemporary president's fitness and ability to govern. The conduct appropriate to an office is a function of malleable, contemporary social customs. Impeachments are one mechanism for defining and enforcing those social customs.

The Clinton impeachment

THE IMPEACHMENT of President Clinton was almost exclusively concerned with this category of impeachable offenses. The president's defenders themselves were forced to recognize the existence of such a justification for an impeachment, even as they tried to put off the president's activities as private and of concern only to his family. The explicit arguments in the impeachment trial itself tended to focus on whether or not the president had committed felonies in trying to cover up his sexual affair with Monica Lewinsky. These are serious issues, and there is an obvious tension between a president willing to flagrantly violate the law when it conflicts with his own self-interest and the chief executive's duty to take care that the laws are faithfully enforced. But they do not exhaust the constitutional difficulties raised by the president's behavior. As Judge Richard Posner has recently concluded in his book on the Clinton impeachment, *An Affair of State*, the president's most serious constitutional offense may be "on the ground of disrespect for his office and for decency in the conduct of government." This disrespect extended far beyond Clinton's possible perjuries to his repeated, clear, and highly public lies directly to the American people and to his willingness to embark on a veritable guerilla war against the independent counsel and the judiciary in an effort to preserve his own power. The real lessons of the Clinton impeachment will lie in the historical assessment of this conduct. Was it bad enough to legitimate a serious impeachment effort?

The prosecution and defense of impeachment charges advance across three levels of inquiry. At the most basic level are debates over the facts. Did the president lie in his grand jury testimony? Did Nixon know about the Watergate burglary? At a second level are debates over the legal and political significance of these facts. Were Clinton's prevarications perjurious? Was Johnson's secretary of war covered by the Tenure of Office Act and legally protected from unilateral removal by the president? These are important debates, and impeachment trials can turn on them, but they are of little long-term consequence.

The most important debates are over the scope of the impeachment power itself. Is the commission of perjury an impeachable offense? Is tax evasion? These are constitutional debates of the first moment, and not only because they will help shape future uses of the impeachment power. They are particularly important because they establish whether the impeachment effort was justified and whether those who engaged in it acted appropriately. Members of Congress can be forgiven if they make factual or legal mistakes in attacking a president or a judge. They are much less likely to be excused for misunderstanding the scope of the impeachment power.

The Constitution empowered Congress to remove government officials before the expiration of their natural terms. The Constitution also imposed two constraints on that power: a structural constraint that requires that advocates of removal obtain majority support in the House of Representatives and a two-thirds majority in the Senate, and a substantive constraint that impeachments can only proceed on the commission of "high crimes and misdemeanors." We are used to thinking of the Constitution as a kind of law, setting up rules and legal barriers to what government officials can do and charging the courts with enforcing those rules. The Constitution also limits government power by creating a complicated structure of governance in which power checks power and by fostering a particular constitutional culture that is committed to certain principles such as individual rights and democratic government.

Thus the search for a final answer to the question of what constitutes an impeachable offense is both misguided and unnecessary. We would be better served by trying to clarify the open-ended principles that should guide any future impeachment inquiries rather than trying to convert the impeachment power into a matter of constitutional law. We should put our trust in constitutional structures rather than in legal definitions.

In hindsight, Congress seems to have come to the right outcome in the Clinton case with an impeachment and acquittal. Congressmen responded to a public debate — not just opinion polls — over the propriety and seriousness of the president's conduct. Important constitutional values were reaffirmed by congressional action, even as the drastic step of presidential removal was averted. Moral principle, legal judgment, constitutional consideration, political calculation, and sheer inertia all played a part in this impeachment, as they have in earlier ones and will again in future ones. The impeachment power will remain available as a response to unforeseeable abuses of the public trust in the future, as it should.

The GOP's Two Brands

Congress v. *the Governors*

By DAVID WINSTON

ONE AFTERNOON in fall 1999, as members of the House Appropriations Committee argued over a Republican leadership proposal to spread Earned Income Tax Credit (EITC) payments to the working poor over 12 months instead of disbursing them in lump sums, Republicans got the shock of the political budget season. The unthinkable happened. The handpicked candidate of two-thirds of House Republicans, George W. Bush, turned on them without warning.

Bush memorably told reporters that he opposed the leadership's plan to delay EITC payments because, he said, "we shouldn't balance the budget on the backs of the poor." This provoked an angry response from House Republicans. Majority Whip Tom DeLay publicly rebuked Bush, saying the Texas governor didn't understand how Congress worked.

No, more likely, Bush understood exactly what he was doing. He was distancing himself from an unpopular Republican Congress. Bush had been looking for the right moment to draw a clear distinction; for House GOP leaders, as they struggled to find a way out of the budget box in which they found themselves, he couldn't have picked a worse time.

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The family feud gave pundits plenty of fodder for the week and did indeed help Bush establish several degrees of separation between himself and fellow Republicans in Washington. It also brought out into the open a little secret that has been the subject of GOP whispering for months: There are two Republican Parties in America today — two emerging party "brands." One is the "Republican governor" brand. The other is the "Republican Congress" brand. And the public has demonstrated a clear preference for the former over the latter.

The world of brands

POLITICAL BRANDING isn't very different, really, from branding in the business world. In one of the authoritative works on the subject, *TechnoBrands*, marketing guru Chuck Pettis describes what makes a brand:

- "The sensory, motive, and cultural proprietary image surrounding . . . a product."
- "A promise of performance."
- "An enhancement of perceived value and satisfaction through associations that remind and entice customers to use the product."
- "A significant source of competitive advantage."

Just so. Voters select their product — a party or candidate — based on similar motivations: perceived benefits, image, and ability to perform, as well as shared value systems. The degree to which parties and candidates are successful in creating a "popular" brand dictates their competitive position come election time.

In the past, Republican and Democratic brands have vied for dominance. Occasionally, a third party rose up and joined the fray. Today, however, we see competing brands not just across the political spectrum but also within the parties. In the past few years, some Democrats, under the leadership of President Clinton, have attempted to rebrand themselves as a Third Way, center-left party of "New Democrats" — to distinguish themselves from the old brand of a liberal Democratic Party. The Republicans, too, have competing brands.

Interestingly, the "governor" brand and the "Congress" brand of the GOP share similar conservative positions on most issues. But their philosophical attitude toward the role and value of government and their approach to representation are significantly different. The outcome of the 2000 election will likely rest on which of these two brands is dominant in voters' minds on election day. The Republican Party strategy will be to make congressional Republicans look more like their more popular "governor" brand — while Democrats will try to tie the Republican presidential nominee as closely to

House Republicans as possible.

What has caused this difference and disconnect between the Republican Congress and the Republican governors — at least in the public's mind?

Different electorate, different approach

GOVERNORS ARE RESPONSIBLE for a broad cross-section of Americans — everyone in their states. As a result, they must accommodate the views and needs of a wide variety of people. They need a broad mandate to govern effectively. Successful ones first build consensus for the policies they wish to pursue, then move toward implementation. As a result, they tend to be pragmatic, placing the emphasis on maintaining a governing majority in their states.

House members, by contrast, tend to represent extremely homogeneous districts. Regardless of party, when most House members go home to their districts, they suffer from what we might call an "echo effect." More often than not, they hear a narrow party base message from their constituents; and, as a result, they have difficulty gaining perspective on the larger electorate. The overwhelming majority of these Republicans come from districts where the real election occurs in the primary. The threat for most Republican members (and this is equally true for Democrats) is not from Democrats, but from a primary challenger, usually from the ideological right (or in the case of Democrats, the ideological left).

Regardless of party, when most House members go home to their districts, they suffer from what we might call an "echo effect."

A good example is Mark Souder of Indiana. Although he is one of the leading conservatives in Congress and a key member of the Conservative Action Team (CATS), Souder has a primary opponent this year who is running because he believes Souder isn't sufficiently conservative. Primary challenges are difficult and expensive even when they are not fatal to a political career. They are to be avoided. And politicians in districts such as these often tilt toward the most conservative policies and politics in order to fend off such primary challenges. At the national level, this phenomenon divides the party into a dogmatic brand and a pragmatic brand.

Safe districts produce longevity in office, and that is typically a requirement for a position in the House leadership. So it is that leaders are especially vulnerable to the "echo effect." Even if Republicans lose 100 seats in the next election, most leadership seats are so safe that few of these members, if any, would be among the missing come January 2001. Yet control of the House lies in the outcome of 60 to 90 districts that are far more ideologically diverse. What the members of leadership hear from their own districts

tends to skew them away from politics and policies that will help them win those seats and hold the majority.

Add to this problem the fact that these members are trying to lead a conference in which 80 percent of the members are from districts similar to their own. They find themselves faced with the Solomon-like task of trying to balance the wishes of the overwhelming majority of their conference members with the differing needs of perhaps 20 percent of the members on whose electoral fate the majority rests.

The "echo effect" could be significantly diminished by using information, typically in the form of survey research, to help understand the concerns of the broader electorate and how Republicans could craft policies to address those concerns and retain their majority in the process. In the 105th Congress under Speaker Newt Gingrich, however, staff regularly refused to allow the presentation of that kind of information in Republican elected leadership meetings, the smallest and most important strategy sessions.

Unlike either the Republican or Democratic conferences, 50 percent of voters called themselves "moderate" in the last election.

In the months and weeks leading up to the 1998 election, many key Republicans and their political advisors predicted winning 30 seats or more — despite the fact that outside polls, and even some internal ones, showed that trouble was looming. The end result was a historic loss for Republicans in the 1998 election, one that showed how out of touch Gingrich and other Republican leaders were with American opinion.

The redrawing of congressional district lines following the 1990 Census also added to the problem of the "echo effect" — by creating more majority-black districts and whiter majority-white districts. The number of African Americans elected to Congress increased 50 percent from the 1990 election to the 1992 election (26 to 39). Congressional representation quickly reflected the more homogenous districts. Majority-black districts elected very liberal members; other districts elected more conservative members. In the two elections that followed the 1990 redistricting, Republicans picked up 10 seats and then 52.

Thus began the battle for the House that continues today, with both the majority and minority party caucuses composed of a majority of members whose political views and approach to politics are far more dogmatic than the electorate at large. For Democrats, this translated into a decision to push President Clinton to pursue a very liberal agenda in 1993-94. He did, and Democrats were thoroughly beaten in the 1994 election.

The new Republican majority, however, misread that election as a mandate for conservative reform no less dogmatic in substance and style. The

great budget fight of 1995 was the result and led to the defeat of the Republican presidential nominee; the loss of House seats in 1996; and a historic loss of House seats in 1998.

Unlike either the Republican or Democratic conferences, 50 percent of voting Americans called themselves "moderate" in the last election. But while many Americans may label themselves moderate, survey research suggests that a better description of them might be as non-ideological, results-oriented solution-seekers — a new outcome-based segment of the electorate. The election in 2000 will be decided by the expanding group of voters looking for results-based proposals from candidates, not by political rhetoric about taking the country "right" or "left."

Support from these solution-seekers in the electorate is a major reason Republican governors have been so successful — whether they be moderate Republicans like Christie Todd Whitman in New Jersey or Tom Ridge in Pennsylvania; or conservatives like Jeb Bush in Florida or John Engler in Michigan.

Where the governors have focused on an agenda, House Republicans have focused on Clinton.

Not all Republican governors have been equally successful in producing "solutions"; but as a general rule, they have tended to govern in a more pragmatic and less dogmatic way than congressional Republicans. Christie Todd Whitman delivered a huge tax cut. John Engler led the way on welfare reform. Jeb Bush adopted a new results-oriented approach to affirmative action that focused on providing real opportunity. Gov. Tommy Thompson of Wisconsin broke the back of the NEA education monopoly with a school voucher program that put children ahead of the education bureaucracy.

Why have governors been more successful in proposing and implementing their solutions-based legislative programs? There are several reasons.

The Clinton effect

WHERE THE GOVERNORS have focused on an agenda, House Republicans have focused on Clinton. To be sure, governors have had a strategic advantage over congressional Republicans. While working to build majority support, they haven't had to personally engage Clinton on the legislative battlefield, nor have they been on the receiving end of his notoriously effective political rhetoric. That alone has helped them create a positive image that has translated into their popular brand.

That said, congressional Republicans must shoulder some of the blame for failing to develop a successful strategy for dealing with Clinton. Instead

of taking on Clinton's bad *ideas*, as they did with health care, they let Clinton become their focal point. Instead of proposing and marketing a Republican agenda that responded to the concerns of the American people, their mantra became: "If Clinton's for it, we're against it."

This created serious problems as Clinton moved to the center, embracing Republican principles. Rather than declare Clinton's policy retreat a victory for conservative and Republican principle — which, in fact, it was — Republicans sought to show America how they differed with Clinton. They refused to accept that 60 percent of Americans approved of the job he was doing. So they found themselves sometimes arguing against their own policies and victories as they swam against the tide of Clinton's job approval numbers.

Welfare reform isn't the only instance in which House Republicans lost a battle for message that they should have won.

The American people transferred their unhappiness with the Republican criticism of Clinton, which they perceived as personal attacks, to the House Republican brand. Republicans had trouble selling even their successes. Welfare reform is a case in point. Without the Republican Congress's pressure on Clinton after the wholesale failure of his health care plan and the Democrats' 1994 congressional election disaster, real welfare reform would never have seen the light of day, much less be passed and signed into law. But House Republicans get little credit for this tremendous accomplishment.

Clinton shamelessly embraced the issue as his own, taking the lion's share of the credit. The Republican governors, who had been clamoring for reform, put their own personal stamp on the issue as they aggressively implemented their own state programs. Meanwhile, as House Republicans tried to claim their share of the kudos, the American public has only begrudgingly and minimally acknowledged their role. Clinton and the Republican governors, not the congressional Republicans, were the big political winners in welfare reform.

Welfare reform isn't the only instance in which House Republicans lost a battle for message that they should have won. A simple policy example is also an interesting trivia question. Who first suggested the idea of funding 100,000 new teachers — a proposal resoundingly opposed by most House Republicans last year? The answer is former House Republican congressional leader Bill Paxon of New York — although his proposal gave local schools more flexibility to implement the program.

Education should be a winning issue for Republicans. Clearly, the liberal Democratic programs of the past 30 years have not improved the education of our children, nor have the billions of federal dollars poured into them achieved real results. Yet, when House Republicans fought the 100,000

teachers proposal, the American public viewed their opposition as a knee-jerk anti-Clinton reaction rather than a substantive policy difference. They were right and wrong. The opposition to the Clinton teacher proposal was rooted in a desire to move away from the practice of Washington dictating education policy to allow for greater local decision-making. But many Republicans opposed the legislation out of hand because of its source.

It's true that research shows that Americans have been developing a negative attitude toward Clinton at a personal level, but they also view the Republicans' opposition to seemingly all of "Clinton's" ideas in an equally negative way. As a result, when the Lewinsky scandal erupted, the public simply extended its hardening perceptions of Republican motives by choosing to believe that impeachment wasn't about breaking the law or lying before a grand jury. It was simply the conclusion of a long vendetta.

Meanwhile, as Americans came to see Washington as the "forces of Clinton" and the "forces of anti-Clinton" playing out the final moves in a high stakes political game that had little to do with them, Republican governors steered clear of the mess in Washington. Instead, they focused on producing results in the states, laying out a Republican agenda, and creating a governing majority. George Pataki in New York, a state with significantly more Democrats than Republicans, has tremendous support based on his successful efforts to decrease taxes, reduce crime rates, make government more efficient, and improve schools. Looking at the brand popularity of Pataki, the Bush brothers, Thompson, Frank Keating of Oklahoma, and others, the strategy of focusing on results has worked.

The medium is the message

GOVERNORS ALSO COMMUNICATE differently than House Republicans. They are physically closer to the people they govern. When it comes to winning support for their policies, they have a natural geographic advantage over their Republican colleagues in Washington, legislating far from home. Additionally, their daily schedules are generally structured to highlight their message. Whether it is visiting a school to focus on education needs or a hi-tech business to discuss new jobs, as state chief executives, they command media attention and have enormous power and staff resources to define and drive their administrations' messages. As the nation's chief executive, the same has been true for Clinton. He drives the message for his administration, and his cabinet and staff sustain that message.

In the House, there is no such message discipline. Rather than driving a single agenda, the message coming from the House is a combination of multiple agendas forced together to satisfy many members. The House leadership exacts no penalty, for example, if the chairman of a particular committee decides to talk about an issue that might contradict or step on the

"theme of the day" or week. There are literally scores of press conferences every week on the Hill, and leadership is generally at the mercy of members' personal agendas and the committee chairs' good will.

Rather than driving a message or policy, congressional Republicans tend to cloister together in meetings devoted to handling the conflicting policy needs of members. As a result, the emphasis is not on communicating ideas to the American people but on how, mechanically, to get policy done. This has put the communications staff at a significant disadvantage vis-à-vis the policy staff — rather like letting the floor steward decide what products a company will sell on the basis of what he is able to manufacture.

Both policy and communications staff are crucial to passing good legislation, but because congressional policy staff has been far more powerful, particularly during the Gingrich years, communications — message development — has been reduced to a footnote during the tactical planning. I use the phrase "tactical planning" because policy development itself is often purely tactical, with the focus on how to get 218 votes to pass legislation.

Too little attention is paid to what the Senate will do, what the president will do, or what the public reaction might be.

Too little attention is paid to what the Senate will do, what the president will do, or what the public reaction might be. This knowledge vacuum has led to a major disconnect with current events and basic opinion trends among Americans — which, in turn, has led to two successive election defeats.

What too many policy people forget is that even good policy passed on the wrong day or without a communications component gets lost in the information overload most people experience on a daily basis. They have forgotten that the battle isn't for 218 votes or the strength to break a filibuster. It's for the hearts and minds of the American people. That's a battle that is ultimately won in the living rooms of America — not on the House or Senate floor.

A painful example of this occurred in the fall of 1997. The House Republican Conference staff, which has primary responsibility for communications strategy, was asked to put together an "Education Week" focusing on Republican education initiatives. The staff developed an excellent plan, which included active involvement of conservative family groups. On the Monday of "Education Week," the policy and floor staff informed the conference staff that a change in schedule had occurred, and a key abortion vote would take place midweek. Naturally, the conference staff was stunned. Not only would the abortion vote overshadow their education effort, but the family groups they were relying on would likely back out of the education effort to focus on the abortion vote.

The conference staff was told that given the time constraints of the ses-

sion, the scheduling of the abortion vote was unavoidable to finish everything the leadership wanted. Even though Republicans ostensibly controlled the schedule, those in control of the schedule could not avoid stepping on their own agreed-upon education communications effort. This in turn angered the family groups, for giving them such little notice on a key abortion vote, and it surprised the regular Republican membership with a last-minute critical vote on a touchy subject.

Governors, on the other hand, have used the process to their advantage. Whether it be a legislative session, federal funding, or a key legal case, governors have been far more successful in using various avenues to drive their agenda and message. Republicans in the House have suffered under an inflexible process that has prevented them from using the floor, the legislative agenda, and their own bully pulpits to their advantage. Democrats, with far more experience in governing the House, have manipulated the legislative agenda to suit their partisan purposes. The Clinton budget victories of 1995-98 bear this out.

The Republican Congress, after its initial success, suffered four years of defeats at the hands of Bill Clinton.

Historically, policy staffers have always wielded tremendous power. But too much legislation has been crafted with insufficient attention to its political ramifications. House Republicans are paying the price for these apolitical policy initiatives with a negative party brand.

The Patients' Bill of Rights legislation in the House is a good example. In October, when 70 Republicans jumped ship and voted for the Dingell-Norwood bill, they handed their leadership an embarrassing setback. The Republican position failed to reflect the depth of voter sentiment on this issue, and until the final days of the debate, there was no timely and viable Republican alternative. The defecting Republicans, however — who withstood fierce pressure to stick with their leadership — understood the political importance of the issue all too well. That is because most were from tough districts and face difficult reelection bids. They read and believe polls. And like the governors, they face a more diverse electorate. They concluded that they could not vote with the leadership and survive next year's election.

Many policy people disdain communications planning and reject public opinion polling, wrongly assuming that the validity of ideas is enough to win on the political battlefield. If that were the case, conservative policy initiatives should have put congressional Republicans in a winning position. Instead, the Republican Congress, after its initial success, suffered four years of humiliating defeats at the hands of Bill Clinton, who has successfully coopted conservative ideas and the credit that goes with them.

Lest anyone get a misimpression, there is nothing intrinsically "conservative" about the neglect of communications and the rejection of polling. A pioneer in this regard was none other than President Bush's key policy advisor, Richard Darman, who worked tirelessly to persuade the president to break his tax pledge. Why? Apparently, he had more faith in himself than in the American people. That view cost Bush his reelection.

The same attitude of knowing better than the people remains prevalent on Capitol Hill. At the beginning of 1999, Republicans in Congress promised three things — to get the budget done on time, to stay within the budget caps, and to provide Americans some tax relief. None of this happened. Staff work was slow on the budget process; and, in the end, there were a series of votes just to keep government operating. The budget caps went by the wayside early on, as the appropriators failed to impose discipline, and Americans didn't get a tax cut.

The Democratic strategy has been simple: No legislation is better than Republican legislation. Without solution-based policy initiatives that clearly address concerns of the American people, congressional Republicans continue to wage an uphill battle. The congressional Democrats block or Clinton vetoes every Republican promise from tax cuts to education reform; and, depending on what day of the week it is, Democrats portray Republicans as incompetent, corrupt, or uncaring.

House Republicans have managed to bring off two noteworthy policy initiatives that were also good politics. The balanced budget and ensuing surplus have been the saving grace of congressional Republicans, and both issues will have salience in next year's elections. The second is the Social Security "lock box" approach. Conference Chairman J.C. Watts and Majority Whip Tom DeLay engaged on the issue of Social Security and got an unbreakable pledge from the House leadership to protect the entire Social Security surplus. When it comes to Social Security, Republicans may not be in the driver's seat yet. But at least this year, they were in a passenger seat with an air bag.

People *v.* ideas

At bottom, there is an attitudinal difference between governors and congressional Republicans toward governing. Governors tend to focus on people and results. Congress tends to focus on ideas and process.

This difference has serious implications for message effectiveness, and by extension "brand" effectiveness. Governors look at ideas on the basis of how they will improve people's lives and the quality of life within the state. They see a direct correlation between the value of an idea and its impact on people. Tommy Thompson and John Engler talked about welfare reform as a way to help people get jobs and training in order to improve their lives.

When he was running for governor of Virginia, Republican Jim Gilmore, a staunch conservative, was clearly going to make a case for tax cuts. He carefully picked a tax most Virginians truly hate: the personal property tax on automobiles. He pushed the theme hard throughout his campaign and won. In doing so, he mobilized people to support him in the legislature and was able to enact significant tax relief.

House Republicans look at ideas slightly differently. Like the governors, they too want to help people; but they are also concerned with creating a system of governance that is more consistent with their conservative vision — from which, of course, they think people will benefit. But in crafting an agenda, the first question is often ideological in character: What is the conservative position on Issue X? Not, how can we benefit people on Issue X? Congressional Republicans, on the subject of welfare, often spoke in ideological terms about ending a federal entitlement program and eliminating perverse incentives.

The "sound" of these two approaches couldn't be more different. To the public, one seems harsh to the ear; the other sounds more "compassionate." In truth, the substance of the ideas at issue may well be the same, but the packaging and style are poles apart.

Consider this example: Republicans in the House want to return more education money to local control, at either the state or local level, because they believe decisions are best made at that level. While the policy is sound and the process may be correct, described in those terms it fails to articulate why this policy change will make a difference in improving children's education. Congressional Republicans have assumed that since it is a better process, the results will be better, whatever they might be. This abstraction has not captured either the hearts or minds of the American people, which is why voters only see Republicans as opposed to more teachers and smaller class sizes, a losing political position.

In contrast, the governors don't talk about revenue streams or local control. They talk about improving children's education in real-world terms. That's because they know that they will be judged by education results, not their adherence to a philosophical vision. In the end, the governors have recognized that the value of ideas lies in how they improve people's lives. There may be a lot of good ideas out there, but the governors are looking for the ones with the most impact. The bottom line is that helping people is more important to voters than creating a better process.

Government: friend or foe?

FINALLY, governors, again like Clinton, have agencies and programs to administer. And again like Clinton, they enjoy similar advantages. They use government programs to implement their policies on command, i.e., welfare reform. As a result, most look upon gov-

ernment not as the enemy but as a tool to help them achieve their political and policy goals.

Congressional Republicans view federal agencies as the enemy — perhaps rightly so — and want to shift responsibility back to the states. They face an unfriendly federal bureaucracy and an obstructionist opposition both determined to subvert their initiatives. So when House Republicans want to send federal education dollars back to the states, for example, Democrats characterize their proposals as anti-education or even worse, anti-children. When Republican governors spend education dollars at the local level, however, they get a pat on the back from the voters.

Part of the problem is the Republican congressional psyche. Congress votes on a budget that spends about a trillion dollars a year. Not all of those trillion dollars go to waste. But it's hard for House Republicans to say nice things about the federal government. It's just not in their nature. Because of this negative view, Republicans don't take credit for the good things that the budget does accomplish. This leaves an open field for Clinton to claim credit for anything and everything positive about the budget, which he does without a second thought.

The test ahead

WHILE THE SCALES REMAIN TIPPED in favor of policy makers over communication professionals in the Republican staff ranks, in recent months, political realism seems to be making a small comeback on Capitol Hill. In 1999, Republicans exhibited a new sophistication by stepping forward with the "lock box" initiative to protect Social Security, the Democrats' traditional fallback issue for negative campaigning.

This change was a first step toward achieving a balance between sound policy making and solution-based governing. By creating the lock-box approach, House leadership used process in the right way — to develop a simple and easy-to-understand message with a clear benefit on an issue the American people care about. In the process, they inoculated themselves from Democratic attack. Unlike the politically costly budget defeats they suffered from 1995 through 1998, in 1999, House Republicans could claim a draw. The Social Security debate was their best performance in the annual budget fight since they took control.

But what about 2000? Can the Republicans maintain their majority? Given the number of open seats, it will be difficult; but it is not the lost cause many believe it to be. There are a number of reasons. The strength of the Republican presidential ticket; a likely high voter turnout; the popularity of Republican governors; the Republican leanings of many of the open seats — all could tip what will likely be many close congressional races.

The most important test, however, will be the House Republicans' ability

to communicate to voters this year a clear and concise message in support of their conservative policy ideas — which are no less valid than they were when Ronald Reagan took office — and how those ideas will benefit voters. They have six months in which to take the lessons learned from the Social Security debate and apply them to election issues from education and health care to tax cuts and Medicare and Social Security. Like the governors, they must communicate the benefits of Republican ideas to people in a personal and persuasive way.

One thing is clear: This is a defining election for the Republican Party. The solution-seekers of the electorate will be the ones who pick the next president, and they will decide the fate of the House as well. Democrats will certainly try to cloak all Republicans, from the presidential nominee down, in the unattractive qualities of the congressional brand described here. If Republicans are going to run under their successful brand, the one their governors have created, they will leave Bill Clinton to his dubious legacy, make message a key component of policy making, and put people ahead of process.

Fraternities On the Rocks

By MAUREEN SIRHAL

FEW ENDURING INSTITUTIONS — and certainly no collegiate institutions — are as quintessentially American as the Greek letter fraternities and sororities. It was in 1776, emblematically enough, that the first such society, Phi Beta Kappa, was founded at the College of William and Mary. Founded chiefly to provide a forum for debate and discussion, Phi Beta Kappa was primarily concerned with enhancing the scholarship of its members. In this the organization was typical of the first fraternities, most of which were founded as literary societies.

The first fraternity in the sense that the word is now used was the Kappa Alpha Society, founded at Union College in 1825 and still in existence today. Like-minded chapters, such as Delta Chi and Sigma Phi, soon followed suit, as did corollary societies for women, sororities. These began forming on campuses in the mid-nineteenth century, mostly as places where women — who were often banned from the public meeting areas of colleges — could retreat.

Neither fraternities nor sororities, of course, have remained static for these 200-plus years; as living institutions, all have changed with the times. Still, it is striking that these particular forms of Americana continue to deliv-

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er much the same benefits to members today as they have since their founding — the provision of a cozier, more intimate setting in which to share ideas, build lasting friendships, and acquire nurture and support from a continuous set of peers in a world that is, for most students, their first experience of life lived separately from their families.

The deep loyalty felt by generations of Greek system alumni is one kind of testimony to the enduring appeal of fraternities and sororities. The numbers also speak to the same point. Despite some attrition during the past decade, more than two centuries after that first Phi Beta Kappa meeting, there remain 67 national fraternities and 26 national sororities — in all, almost a million collegiate members in over 8,000 chapters across the country.

Fraternities and sororities today are under siege as never before by administrators across the country.

Yet despite their unique place in American collegiate history, despite even their demonstrated success in serving the interests of their membership, fraternities and sororities today are under siege as never before by administrators across the country. To be sure, campus authorities have clashed with the Greek system at other points in history. In the mid-nineteenth century, for example, schools like Monmouth College forced their Greek societies to close down for reasons similar to what is today decried as "discrimination" and "elitism." Phi Beta Kappa, to take another example, eventually evolved into its present form of scholarly society as a response to public criticism of its secrecy. And there is no denying, either, that anti-intellectual practices at some chapters and houses, notably drinking, have given many an administrator a perfect pretext for cracking down.

Even so, there is also something new afoot in the longstanding power struggle between administrators and Greeks. For one thing, college and university administrators are far more ambitious about what is happening outside the lecture halls than they used to be. Throughout the 1990s, they have shown a marked and increasing interest in extracurricular activities or "residential life," of which the attempt to control fraternity and sorority life is but one example.

Even more interesting, though, is the largely unnoticed fact that the antipathy many administrators feel toward Greek life has a political dimension too. Fraternities and sororities, both of which tout the benefits of single-sex housing, directly contradict the widespread, politically "enlightened" view that all such distinctions ought to be obliterated. But the ideological differences between Greek members in general and campus administrators in general go deeper than merely the single-sex issue. It is a gap that suggests we should take a closer look at the ongoing attempt to eradicate fraternities and sororities as over two centuries of history have known them.

The itch to abolish

PERHAPS THE MOST PUBLICIZED example of 1990s-style attempts to end Greek life on campus is that of Dartmouth College. In fact, Dartmouth is a particularly telling example of the trend, for there the attempt to dismantle the Greek system has proceeded despite the fact that nearly half the student body belongs to fraternities or sororities. Even more interesting, it has also proceeded despite the fact that the Greek system enjoys overwhelming support among the student body at large; according to a poll taken by the *Dartmouth*, the campus newspaper, some 80 percent of students said they would prefer to keep the system the way it had been.

Nevertheless, last February, the board of trustees abruptly announced its decision (emanating from a long-held desire) to overhaul residential life on campus to "fit with the mission and academic goals of Dartmouth." Nearly a year in the making, the controversial initiative will cost millions and alter campus life so extensively that Dartmouth President James Wright has declared it "the biggest change since coeducation." In essence, the initiative defines five goals of residential life — including the creation of a system that "should be substantially coeducational and provide opportunities for greater interaction among all Dartmouth students."

At stake in this controversy, of course, is the very future of Greek life at Dartmouth. A newly released report issuing proposals for the "Student Life Initiative" outlines just how radical the administration's plans are. Though Wright has indicated that the aim of this plan is not to "get rid of fraternities," it is hard to imagine a more efficient way of doing just that.

Under this new plan, Greek houses will be forced to live under a slew of tighter rules. In addition to micromanaging the governing boards of those houses, the new initiative would allow only the officers of each Greek house to live under its roof, thus drastically reducing the number of residents at most houses. This is a direct assault on the financial viability of the Greek system, since fraternities and sororities depend on keeping a house filled to capacity to stay solvent. In addition, houses will be open to residents only on condition that a counselor specializing in alcohol or sexual abuse live under the roof. Ultimately, the school will be forcing the closure of all Greek chapters unwilling to accept the proposed regulations. As the report states bluntly and without apparent regret: "It is unlikely that all present organizations would be able to meet the new standards with the result that the number of organizations will probably be reduced."

Yet it is hard to see how a system whose members include nearly half the campus can be dismissed as "elitist" or "discriminatory." The truth is that bias against Greek life has animated Dartmouth administrators for years, long before the need for "substantially coeducational housing" proved a

winner. Wright himself, for example, has chaired task forces recommending that new housing alternatives be made available for students because the "Greek life has dominated campus."

Yet Dartmouth is merely the latest example of colleges that have taken measures to abolish Greek life. In the past nine years there have been over a dozen campuses that have ended or severely limited the scope of fraternity life: Bucknell, Bowdoin, Middlebury, Bates, and Hamilton, to name a few. These institutions generally argue either that Greeks support discrimination or that they foster a culture incompatible with the goals and mission of the institutions — or both. So far, their efforts appear to be working.

As administrators began cracking down on Greek life at various colleges, for example, stagnation and loss of membership were the first results. The national membership averages in fraternities and sororities decreased between 1991 and 1997, as compared to the explosion in membership during the 1980s. According to the National Panhellenic Conference (NPC), an umbrella organization for 26 international women's fraternities and sororities, membership in these organizations, which had been estimated at 163,000 in 1991, declined to 157,000 by 1997 — a decrease of nearly 4 percent. (Just a decade earlier, by way of comparison, sorority membership had been 110,000 in 1981 and jumped to 147,000 by 1987 — an increase of more than 30 percent.) Likewise, fraternities mirror the membership decline. Surveys conducted by the Center for the Study of the College Fraternity at Indiana University found that the 292 institutions reporting in 1992 had 162,820 members; in 1997, while more schools reported (346), the membership number was lower, 133,210. The *Chronicle of Higher Education* recently noted that overall fraternity membership is down as much 30 percent. At particular universities, the numbers are even more startling. Michigan State University, for example, has suffered a 50 percent decline in Greek membership over the past nine years.

Dartmouth is merely the latest example of colleges that have taken measures to abolish Greek life.

Numbers tell only half the story; matters like morale are harder to measure. Yet one need only walk around campuses today to observe just how anxious and suspicious all these administrative attacks have made the Greeks. Dartmouth's students so vehemently protested their trustees' announcement that they captured national headlines. There is a general consensus among Greek members that administrators and faculty hate them and are out to get them.

Unfortunately, the fear appears justified. Take, for example, Middlebury College. In 1992, the board of trustees, accompanied not far behind by the administration, dubbed the fraternities (sororities had died out by then) to be "antithetical to the mission of the college." The board of trustees issued a

landmark resolution that all-male fraternities had to integrate women or disband. As in the case of Dartmouth, the decisions met with much reluctance on the part of students, and outright protest from Greek members. More than half the campus supported the notion of keeping fraternities exactly as they were. But administrators and trustees, acting in this case in the name of complaints of "sexism" by a campus feminist organization, were unmoved. As the Task Force on Social Life at Middlebury stated in its report, "As society has changed fraternities have not, and therefore, have become an anachronism." After winning a lawsuit filed by the Delta Kappa Epsilon national fraternity, Middlebury trustees forced the closure of all Greek chapters unwilling to accept women. The groups that did capitulate renamed their houses, becoming independent of the national umbrella organizations.

Middlebury trustees forced the closure of all Greek chapters unwilling to accept women.

At Middlebury, as at Dartmouth, routine events — general complaints about Greek behavior and incidents of such behavior on the part of the fraternity members — were not treated routinely; they were instead seized upon as weapons in the struggle against the fraternities. Similar circumstances prompted Bowdoin College in 1997 to declare its own war on Greeks. The college's board of trustees voted to abolish fraternities by May 2000. Waynesburg College in Pennsylvania has said goodbye to its Greek system; at the start of the 1999-2000 school year, fraternities were no more. In these cases, what unfolded was no mere punishment for a couple of bad choices or insensitive comments, but rather a very visible push to de-emphasize and ultimately eradicate the culture that the fraternities represented on campus.

Ironically, a *Los Angeles Times* report described Middlebury as "spearheading a countertrend: an attempt to reform rather than eradicate its fraternities." While other northeastern colleges, such as Amherst and Colby, simply abolished their Greek systems outright in the 1980s, Middlebury instead merely wanted "reform." "Reform," it turns out, means molding Greek organizations into a vision more closely related to the goals of the college trustees and administrators — in other words, making them unrecognizable.

The common perception among administrators is that Middlebury made the right move. In the battle over residential life, traditional fraternities — those chapters that usually have a national presence and hold representation on the North-American Interfraternity Conference (NIC), in other words those most likely to be thought of as the "old boy" network — are now the major targets, and terms like "diversity" and "inclusiveness" are the weapons of choice. Today at Middlebury, some members of the former chapters that once occupied fraternity houses on campus meet in secret. They do so because if caught participating in the rituals and memberships of fraternities, students will be expelled.

Maureen Sirhal

Death by alcohol?

WHEN THE ARGUMENT against Greek life is not being rationalized in the name of coeducation, gender equity, inclusiveness, and all the rest, its detractors present a more serious charge: that Greek life perpetuates binge drinking. Here would be real cause for concern, if the stereotype of "Animal House" were to hold up under scrutiny. But it does not help the administrators' case that the connection between Greek life and alcohol abuse is based on data that invite skepticism.

Alcohol is indeed a serious concern on campus, for several reasons. One is a genuine desire to protect students and reduce the risks of terrible incidents, such as deaths from alcohol poisoning or from related consequences of drinking. Moreover, bad publicity resulting from the behavior and incidents associated with excessive drinking harms the college's ability to attract superior students, solicit funding, and generally project a reputation as a serious academic institution. Third, there are liability concerns. Though colleges long ago abandoned the idea of acting in loco parentis, thereby abjuring responsibility for student behavior, they *are* still responsible for student safety. Every incident of injury or death on campus is accompanied by the threat of legal action and million-dollar lawyers' fees for defending the school.

Over the past decade, the rationale for cracking down on the campus social scene — including on fraternities and sororities — has been the increase in "binge drinking" among students. Of all elements of the campus social scene, it is the Greek system that faces most scrutiny in this regard.

This is ostensibly because of widely accepted research that touts a strong link between binge drinking and fraternity membership — the famed 1993 Harvard School of Public Health College Alcohol Study conducted by Henry Wechsler. According to Wechsler, binge drinking is defined as the consumption of five or more (four for women) drinks in one sitting. Relying on survey data from more than 17,000 respondents, Wechsler estimated that over 44 percent of college students are binge drinkers. With such stunning figures, it was this study, more than any other single factor, that launched a national obsession with college drinking and with fraternity drinking in particular.

Wechsler's data were especially damning for fraternity and sorority members. Wechsler estimated that four of five fraternity members are binge drinkers. Moreover, he found that both male and female members of Greek organizations are more likely to suffer the extreme consequences of serious drinking. Dozens of reports since Wechsler's have repeated these and similar findings, pointing the finger of blame for heavy drinking on the fraternity culture as the breeding ground of binge drinking.

As social science, however, the reports just don't add up to a justification for killing off the Greeks. The link may indeed be strong between Greek

membership and drinking. But how significant is that, if a number of other factors also predict binge drinking? The *Journal of American College Health* in a May 1999 report noted the strong link between college athletics and binge drinking. It estimated that nearly 78 percent of college athletes are binge drinkers — almost exactly the percentage that Wechsler assigned to fraternity members. In fact, Wechsler's own report acknowledged that collegiate alcohol abuse also appeared strongly related to at least one other external correlate, namely high school binge drinking. Nevertheless, it has been easier to blame the Greeks for binge drinking than to pursue such avenues as these.

Other scholarly journals as well as the media tend to take Wechsler's findings on binge drinking as holy writ — which overlooks potential flaws. Consider the fundamental question of methodology, i.e., how drinking patterns are measured in the first place. Wechsler's subjects self-reported their behavior — a way of doing social science that leaves open the question of the truthfulness of the reporting by subjects. There is reason to be skeptical about that. To take just one example, a 1991 report in the *Journal of Studies on Alcohol* by John Baer, a professor at the University of Washington, asserted that students, when self-reporting on their own drinking practices, commonly *overestimate* the drinking practices of their peers.

The rationale for cracking down on the campus social scene has been the increase in "binge drinking."

Moreover, the Highway Safety Research Center at the University of North Carolina at Chapel Hill has recently released the results of a two-year study indicating that student binge drinking is not as dire as Wechsler's research initially proclaimed. Unlike the self-reported data in the Harvard study, the data in the North Carolina study were derived from measuring the blood-alcohol concentration (BAC) via breathalyzer of its participants, resulting in more accurate, quantifiable assessments of student drinking. The study revealed that students are simply not drinking as much or getting drunk as often as perceived. Sixty-six percent of the 1,790 student participants showed a BAC of .00 on weekend nights. That percentage was even higher during the week.

But amid the hype of several well-publicized alcohol-related deaths, parents, administrators, faculty, and the general public are always in a hurry to blame something. The point here is this: Most students drink, both Greek and non-Greek. But administrators and critics of fraternity life single out the correlation between fraternity and sorority members and binge drinking. The drinking issue is, in effect, a handy pretext for clobbering Greek life at large.

Collegiate administrators wasted little time in seizing upon alcohol incidents as a way to control fraternities and sororities. As Indiana University

Dean Dick McKaig put the point, "there are a number of behavioral problems that capture the headlines with enough consistency that always have [Greeks] at the scrutiny of faculty." He noted that fraternities incur a higher burden because, unlike off-campus housing or even dorms, Greek chapters have an "organizational structure that [one] can argue against or lobby against." So administrators impart restrictions on membership recruitment, living arrangements, and social events. Most Greek systems on campuses across the country are expected to register their social events with an administrative arm of the college and seek official approval from collegiate officials for their membership recruitment. Most colleges also restrict the time period for membership recruitment, limiting the age group as well (all of which have damaging financial consequences for the Greek organizations).

Forcing the closure of fraternal organizations only gives students the excuse to seek even less supervised and less accountable venues.

Even more perverse is forcing Greek chapters to close in the name of wiping out drinking. The consequence of this move, experience suggests, will be a surge in off-campus drinking. Consider Princeton University, where, in the past five years, the speedy growth of underground fraternities has led to concerns about drinking off-campus. Greek letter organizations were stamped out at Princeton under the reign of Woodrow Wilson (the Greek organizations were eventually replaced with a different, albeit similar, social network called eating clubs.) These new underground fraternities are organizations unrecognized by the school's administration. They survive mainly because members organize activities in off-campus housing (mostly rented by the members of these organizations, which do not own their own chapter houses).

In all the attention given to culpability on the part of fraternities, little to no attention is paid to the students who break laws or college regulations because they are out of sight. Forcing the closure of fraternal organizations only gives students the excuse to seek even less supervised and less accountable venues: Bars, apartments, and private houses become host to the same bad decisions and irresponsible behavior, with no organization whatever to hold responsible for it. David Hanson, a sociologist at the State University at Potsdam in New York, cautioned in a 1995 *New York Times* report, "Moving the Greeks off campus could be the worst solution of all. As long as the drinking is on campus, the school has some control over it. It would lose that control if students had to go to bars and other places which are not so desirable."

There can be no doubt that the typical level of drinking on campus is too high. Indeed, most students openly acknowledge as much. In the face of so

many incidents involving alcohol, many campus Greek systems are now using self-imposed bans on alcohol or revising alcohol policies to reduce abuse. At Michigan State University, for example, the campus's Greek chapters voluntarily banned alcohol from their houses after campus riots last year. Countless other Greek systems organize campus-wide events, open to all students, to educate them about alcohol. The North-American Interfraternity Conference and National Panhellenic Conference expend much time and many resources educating Greek members on the dangers of alcohol abuse. In addition to a financial commitment, potential Greek members must make a time commitment, usually each semester, for alcohol awareness seminars and discussions, all of which are sponsored by individual chapters or the campus Greek community.

But for many administrators, it is clear, the goal is not simply to reduce alcohol abuse, but to crack down on fraternities in order to mold a new campus culture. At Dartmouth, former Panhellenic President Kelly Bodio acknowledged that drinking is such a serious problem that campus Greek leaders meet regularly to address the issue — and voluntarily offered to go dry during student/administrator discussions of the looming "social initiative." But at Dartmouth, significantly, even going dry is apparently not enough. As President Wright told the campus paper in an interview, "I wouldn't even fantasize how to make a dry campus here."

Undoubtedly, the alcohol craze on campuses across the country will take years to change — years in which alcohol will continue to be used as a rallying cry against the Greeks. The ironic footnote to it all is that dormitories, not fraternities, took the lead in creating the drinking culture on campus. In the early 1970s, when colleges relaxed restrictions in dormitories, dispensing with faculty supervision, droves of students migrated back to the dorms. With a lower drinking age, and no supervision, dorm life was far more attractive to student bodies shrugging off authority. Facing the heavy financial burden of filling their houses with members, fraternities quickly followed suit. One by one, they lifted many restrictions, making the presence of alcohol in the chapter houses a relatively new phenomenon, dating back approximately 25 years.

Animal-friendly house?

THE COURSE OF THE PAST TWO DECADES has given rise to a distinctly new campus culture shaped by administrators' concerns over residential life. Administrative and faculty concern for students extends beyond the scope of simply attending classes, researching, and studying. Their ambitions now encompass the totality of a student's experience while in college, including social activities. Gordon Haaland, president of Gettysburg College, sums up the enlarged scope of all this nicely in the fall issue of *Net Results*, the on-line magazine of Student Affairs

Administrators in Higher Education, also known by the acronym for its former name, NASPA:

> I fear we have not done enough to create the kind of community in which a student's intellectual and academic development is well-integrated with that student's emotional, physical, spiritual and social development. While all colleges have a statement of academic purposes, few have a well-articulated philosophy of college life beyond the classroom.

In a sense, the new campus culture is trying to revive the old practice of acting in loco parentis. Its abdication in the 1960s and '70s was, in part, politically motivated, a capitulation to student protest. But it was also grounded in the belief that students, when unsupervised, would be free to explore areas of personal interests. Of course, at the time, those interests included the counterculture and anti-war protests — all of which made Greek life an arm of the establishment, and therefore an unattractive option. And indeed, in this period, the Greek houses saw their lowest membership numbers in history.

If this is a return to in loco parentis, it is an entirely new incarnation of that practice.

Yet instead of pursuing the same countercultural activities as their faculty antecedents, post-baby boom students went the other way. They chose Greek life. *Newsweek* proclaimed in 1983 that "It's Back," meaning "The Rise of Fraternities." By the mid-1980s, there was a 180-degree change in Greek popularity from a decade earlier. "Across much of the country a special kind of Greek revival is thriving on campuses," *Time* reported. In fact, membership between 1980 and 1986 nearly doubled.

By 1990, the growing trend to limit these organizations, their activities, and by extension, their very existence had also become clear. "The Party's Over," announced the headline in the *Washington Times*, and what began as a trend to "reform" has quickly grown into the trend toward eradication visible today.

But if this is a return to in loco parentis, it is an entirely new incarnation of that practice. Today's direction is fueled as much by controlling the influences on students as it is by the concerns over safety and drinking. And fraternities and sororities are greatly pressured in a whole host of professional literature to bow politely to political correctness in all its forms. "The Future of the Greek Experience: Greeks and Diversity," as taken from the guidebook for student services *New Challenges to the Greek Letter Organizations: Transforming Fraternities and Sororities into Learning Communities,* is one such piece of literature detailing the new approaches Greek organizations must take in order to remain a successful and viable part of residential life on campus. Among other things, Greeks must embrace the notion of a "community of learners" — a phrase loaded with

ideological meaning in the progressive tradition of education — and actively recruit with goals in mind that will strengthen and diversify the Greek experience. In other words, the goals of Greek organizations must clearly promote and endorse and even advance the political goals of college administrators, which inevitably include the promulgation of diversity and multicultural awareness, as well as the spread of anti-sexist and anti-homophobic agitprop — the dominant orthodoxies on most campuses across the country.

Any fraternities and sororities reluctant to dive headfirst into the sea of liberal academic rhetoric only reinforce the stereotypes in administrators' minds. In an article in the *NASPA Journal*, Edward Whipple, a vice president at Bowling Green State University, explained that administrators "see no contribution by fraternities and sororities to the moral, ethical and intellectual development of their members." Hence, "the challenge to student affairs administrators appears to be clear. We must either find ways to redirect the values systems of the fraternities on our campuses or we should commence the process of eliminating this dinosaur from our midst."

See no good

THE FINAL PROOF that the attack on fraternities is politically motivated is this — that changes have already occurred in the way fraternities operate, and that administrators intent on dismantling the system must turn a blind eye to them. Yet on many campuses, Greek life is becoming a more practical part of the new campus culture. For years, national chapters have been emphasizing a push back to the roots of the organizations: scholarship, friendship, and service. As Steve Zizzo, a former executive vice president with NIC, explained, "With the drop in membership in the 1970s we had to examine our role and how we were recruiting. The NIC has always stressed the traditions of brotherhood and service, while trying to reduce hazing and alcohol." Additionally, individual university chapters of national fraternities have started grass-roots initiatives that emphasize less "partying" and more community outreach.

Changing the culture inside the systems is as difficult as changing the drinking culture on campus — which explains why in the four years since his initial report, Henry Wechsler found little decrease in binge drinking numbers. But while administrators point the finger of blame at fraternities, NIC leaders have been working for the past two decades to change students' mindsets on drinking. Already more than half of the organization's 65 member fraternities have declared initiatives to "go dry" by the end of 2000. If alcohol were indeed the source of administrators' antagonism toward the fraternities, then initiatives like these would appear to be the solution. The fact that many administrators want to shut them down, dry or not, ought to tell us something.

Greek life on campus is more than a thorn in the side of administrators; it

is also, at least for some, a political affront. The problem, in a word, is Greek conservatism. During the mid-1980s, when the Greek system enjoyed visible popularity across the country, *Time* magazine accurately noted that the boom in Greek membership, "to many educators . . . [was] a reflection of the swing toward Establishment values and conservatism on campuses." Some interesting data bear out this link between politics and attraction to Greek life. For example, the Institute for Social Research at the University of Michigan, in conjunction with the *Michigan Daily* (the campus newspaper), conducted a poll in March 1999 on student views on affirmative action (Michigan is the site of two lawsuits for reverse discrimination in its admissions process). Of the population polled, a large contingent of Greek students sided *against* U-M's firm defense of racially based admissions. According to the *Daily*, only one-third of Greek students polled supported using race as a factor in admissions, compared to 43.8 percent of non-Greek students.

The difference is noteworthy because it adds to the perception that there is something about Greek students that creates an alternative constituency whose opinions run counter to policies and goals of faculty and administrators. As one professor put it recently in the *Chronicle of Higher Education*, "Higher education today is controlled by those who reached maturity in the 1960s and 1970s. I suspect that the vast majority were not Greeks and view the characters depicted in *Animal House* as accurate models for the sorority-fraternity experience."

These ideological divisions are beginning to be noticed elsewhere. The *New York Times* recently noted in an extensive piece on Dartmouth:

> The college's plans represent an important test case in a small but growing movement . . . . Worried about alcohol-related deaths, sexual assaults and hazing, *but mostly by deep divisions within their student bodies* [emphasis added], more than a dozen colleges have either banned fraternal organizations from campus or forced them to become coeducational . . . .

There can be little doubt that such "deep divisions" are political, with Greeks being singled out as others are not. Dartmouth, for example, initially placed a moratorium on any new college-recognized Greek chapters shortly after first announcing the changes to residential life, thereby halting the growth of the system. Of course, the moratorium would not affect any group of women who chose to start a club to promote sisterhood — only when they decide to take Greek letters as their name would the opportunity expire. Steve Menashi, a student at Dartmouth and the executive editor of the *Dartmouth Review*, summed it up well in a letter to the editor of *National Review*: "Undergraduate societies allow students to organize and dissent from regnant political orthodoxy. The Dartmouth administration wants to end the college's Greek system precisely because it presents a barrier to the imposition of an ideological agenda."

What does the Greek experience provide? From the perspective of today's faculty and administrators, perhaps, not much but headaches. Alumni of the system, however, feel differently. According to a 1997 survey conducted by the National Panhellenic Conference and North-American Interfraternity Conference, Greek alumni are the building blocks of "social capital." They are people who go on to volunteer, donate money, and help provide the manpower to revive and propel communities. Likewise, Greek alumni contribute more generously to their alma maters than do non-Greeks. The same study showed that 22 percent of Greek alumni contributed between $500 and $1,000 in 1996, compared with 4.2 percent of non-Greeks.

Greek life was founded on the idea that there are substantial benefits to be had from a small group of men or women coming together in a setting that promotes selectivity: the honor of preferring some above others. And while this notion may be outdated in the eyes of administrators, it is a tradition that has endured for centuries, stressing values that are now foreign across most college campuses.

Yes, there are indeed problems with the Greek system, but so too are these problems part of the larger issues on campus. They stem from a wider and more debased cultural environment, which students have embraced. But those trends surfaced and have been fueled by these same administrators who now argue that students might actually require a little supervision. Dismantling fraternities and sororities, or molding them into unrecognizable versions of themselves, accomplishes very little compared to the big-picture troubles that plague students and campuses alike. It is the culture that needs to change, and the destruction of these organizations, along with the opportunity for students to choose how they associate, will not achieve that.

Alexis de Tocqueville famously observed that Americans "constantly form associations. They are the most fraternal people in the world." But first they must be allowed to associate. It will be a pity if a decade of ideological hostility ends up extinguishing a tradition that remains, warts and all, an irreplaceable link to the country that shares its birthday.

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Social Security is one of this country's best-known and most widely accepted government entitlement programs. Unfortunately, few Americans really understand how the system operates. Now a pair of new books from The Heritage Foundation brings the Social Security debate into clear focus:

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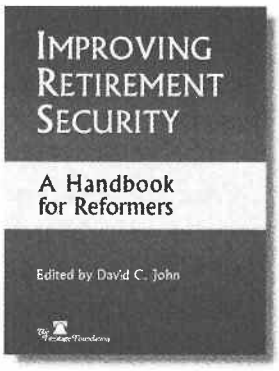

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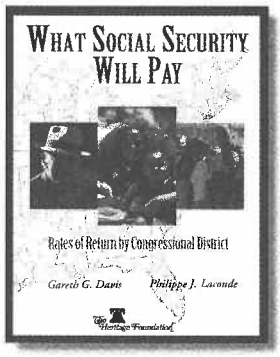

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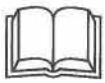

BOOKS

The Truth About Robber Barons

By WOODY WEST

JEAN STROUSE. *Morgan: American Financier.* RANDOM HOUSE. 796 PAGES. $34.95

RON CHERNOW. *Titan: The Life of John D. Rockefeller Sr.* RANDOM HOUSE. 774 PAGES. $30.00

CAPITALISM HAS NEVER suffered from a glowing reputation, of course. This is not surprising. It does not present itself as cozily as can socialism — or, now, the "Third Way" of splitting the ideological and economic differences that the center-left is adopting since the command economies collapsed. In this country — the right auricle of democratic capitalism — there has long been a tension between admiration for material achievement and resentment of it as an insult to our fiercely egalitarian ethos. It is an ambivalence that rises nearly to the level of a national characteristic.

Sociologist Peter Berger put it neatly when he wrote that capitalism is "particularly deprived of mythic potency." That status will change, he writes, only "on the day when poets sing the praises of the Dow Jones and when large numbers of people are ready to risk their lives in defense of the Fortune 500." Berger does not assign high probability to either.

Well, droll as it may seem, let us now praise famous capitalists. Praise seldom is their portion. They must content themselves with the money — and perhaps the fawning authorized biography that celebrity of all sorts can command. Judicious appraisal, however, of those who've scaled the capitalistic heights is rare enough to deserve high billing on the literary marquee. Two recent biographies qualify — of J. Pierpont Morgan and John D. Rockefeller Sr.

Those two great and admirable Americans (this sentence is an Irony Free Zone) have been recognized only fitfully for their achievements, respectively as industrialist and as banker — recognized, that is, without an asterisk sourly asserting that their accomplishments were at the expense of widows and orphans, the helpless and the oppressed, and are testaments to acquisitive soullessness. "Robber Barons," as in the title of Matthew Josephson's 1934 dyspeptic demolition job, is the label under which these individuals are usually filed away.

There indeed were rogues who worked the raw precincts of nineteenth century capitalism — Jay Gould, Daniel Drew, E.H. Harriman, and Cornelius Vanderbilt are only the top names on a long muster roll. These

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Woody West is associate editor of the Washington Times.

were hard fellows in a hard time. Their ethical standards for commerce during the feverish post-Civil War decades of innovation, accumulation, and consolidation were capable of shocking even their contemporaries, who were not known for sensitivity on the subject.

The two recent biographies are *Morgan: American Financier*, by Jean Strouse, and *Titan: The Life of John D. Rockefeller Sr.* by Ron Chernow, both from Random House. Strouse on Pierpont Morgan is brilliant; Chernow on Rockefeller is impressive in its prodigious detail but less so in its grasp of the man. These biographies are also quantitatively notable, Chernow at 774 pages, Strouse at 796 pages — reading them sequentially can bulk up one's biceps to the dimensions of an NFL linebacker's.

Why, we're entitled to ask, have two writers invested years of research and writing about lives that have not lacked for attention? The reason may be as basic as that each generation rewrites history, and the itch to contrast a present perspective against earlier judgments is compelling. It might be also that Americans have become less defensive about our robust economic past. In that context, and make of it what you will, note as well the recent and admiring biography of Calvin Coolidge (*Coolidge: An American Enigma*, by Robert Sobel), and a vigorous defense of U.S. Grant's presidency (*President Grant Reconsidered*, by Frank Scaturro).

Liberals, however, are likely to buy little of this. In a combined review in the *New Republic* of the Morgan biography and Bill Gates's latest offering, *Business @ the Speed of Thought*, Rutgers University historian Jackson Lears dismisses them as "zeitgeist books." Presumably, he would also include Chernow's biography of Rockefeller. That is, the books are "evidence of the renewed reverence for business leaders that has come to characterize the money-culture of our time," Lears sniffs. He is particularly disdainful of the Microsoft founder — who likely will lead any liberal list of postmodern robber barons.

But to turn to our puissant principals: Neither Rockefeller nor Morgan fits conveniently into facile categories of greed and pillage (though Morgan's baronial flair and sumptuary style are more in the conventional image of the age). In fact, they deserve to be called great Americans because each, in his way, believed that civil society had a claim on his wealth — that immense accumulation imposed commensurate responsibility. If both these capitalist giants conflated national interest with their own advantages (and the two could indeed be congruent), this does not detract from their recognition of obligation, and that they acted handsomely on that sense of obligation.

Not surprisingly, these two immensely powerful Americans in the shank of the nineteenth century and the quickening years of the twentieth did not much care for each other. Though each had an extensive American genealogy, they were hatched from very different eggs, far distant culturally and socially alien to each other in basic ways.

Rockefeller's ancestors maintained social and economic respectability, though without particular distinction. His father, however, did not sustain that modest legacy: William Avery Rockefeller was a snake-oil salesman

(literally), a glibly engaging con man who episodically deserted his family, and, finally, a bigamist. His mother, Eliza, pious by nature and nurture, was hard put to provide for her eventual brood (sons William, John, and Frank, and sisters Lucy and Mary Ann — the patriarch did return home from time to time). She ran a taut ship. Her religious faith was intense and domestic discipline was stern, as if to compensate for the restlessly eccentric father.

Pierpont Morgan, in contrast, was the descendant of an established merchant family on his father's side and New England clergy on his mother's (one of his maternal ancestors was the wife of the great preacher Jonathan Edwards). Morgan's was a privileged home in which religion and social probity were enthroned — in practice, they were identical virtues. His mother, Juliet, was early a valetudinarian and on the fringe of his life; his father, Junius, was the dominant force, a man of rectitude, if sparing in warmth for a son of delicate health — but also an erratic disposition that today would probably be diagnosed as manic-depressive.

Both young Rockefeller and young Morgan were left largely to create themselves. Their educations were irregular but not unusually so for the period and, as it would turn out, quite adequate. Both young men early exhibited a capacity for mathematics, were renowned for their ability to absorb and attend to detail, and developed habits of uncommon reticence in their personal and commercial dealings. Both hired substitutes to serve in the Union Army during the Civil War, a practice as accepted at that time as college deferments to avoid military service were during Vietnam. Religion was integral to the life of each. Morgan was an Episcopalian who throughout his career maintained lay participation and institutional interest in church affairs. For Rockefeller, his Baptist faith was inseparable from every other aspect of his life and constituted a primary motive force from early in his life.

Both young Rockefeller and young Morgan were left largely to create themselves. Their educations were irregular but not unusually so for the period and, as it would turn out, quite adequate.

Their differences were as pronounced as their similarities. Morgan in his maturity was as sensual and flamboyant as Rockefeller was abstemious and frugal. Morgan was inarticulate, restless, diffident in public, the disfiguring rhinophyma that turned his nose into a grotesque purple bulb surely contributing. He was highly susceptible to feminine charm and female company: His first wife died of tuberculosis less than six months after the wedding; he and his second wife discovered that their habits were radically different and over decades increasingly

lived apart. Morgan maintained friendships, platonic and evidently otherwise, with an impressive list of women — indeed, as a man of very ripe years, he proposed to an English aristo after his wife's death.

Rockefeller, again in contrast, spoke and wrote with precision and was civil and amiable (for the most part) in his business relations. He was a homebody and uxorious (though his biographer asserts that as a widower in his 80s, his hands were said to roam while in the back seat of chauffeured limos with female acquaintances). He delighted in his children, though he subjected them to a stifling accountability — requiring, for instance, that they record every expenditure in notebooks he would inspect weekly, well past their childhoods. His greatest indulgence was in becoming a fanatic golfer in middle age.

The vast majority of the foreign investment upon which the U.S. depended — much of it represented by the house of Morgan — was based on the discipline of gold.

While the muster roll of Gilded Age big dogs is a long one, a history of that exuberant era could nearly be written with the focus essentially on these two.

For nearly half a century, J. Pierpont Morgan was the de facto central bank of the United States (the nation lacking any such institution after Andrew Jackson in 1832 vetoed a charter renewal for the Bank of the United States). Lacking what amounted to a governmental money supply regulator, the dramatic boom-and-bust cycles that battered the economy roughly every decade after the Civil War were often devastating. Twice, once under Grover Cleveland and again during Theodore Roosevelt's administration, Morgan guaranteed the financial solvency of the nation.

The vast majority of the foreign investment upon which the U.S. depended — much of it represented by the house of Morgan — was based on the discipline of gold. "Morgan couldn't afford not to take the action he did in 1895" to prevent the federal government from declaring bankruptcy, Strouse writes. During that depression, a time also of violent social turbulence, the Treasury's $100 million gold reserves sank to $9 million. Outstanding drafts on the government stood at $12 million. If presented, they would throw the government into default and destroy U.S. credit — which is to say that investment gold from abroad would return whence it had come.

Morgan found a legal way by which the Cleveland administration could in a national emergency buy gold to replenish reserves. He put together a syndicate to buy sufficient gold to restore solvency, saving the day for the politicians. He also made a profit, though hardly an exorbitant one. This was an instance in which the public good and Pierpont's own interests matched. He repeated the audacious initiative in 1907 during TR's White House tenure.

By the 1890s, Morgan was the most prominent financier in the nation, with an international reputation to match. He had established himself as a force in and of himself (looking into Morgan's eyes, the photographer Edward Steichen would record, was like "looking into the light of an oncoming express train"). Morgan's creations of the Northern Securities railroad trust and of the largest corporation in the world at the time, U.S. Steel, were the apex of consolidation. Coinciding as they did with the rise of the Progressive political movement and a growing national fear of concentrated wealth, these two initiatives would also loose the countervailing force of government regulation, notably the Interstate Commerce Act and the Sherman antitrust law.

J. Pierpont Morgan was not a champion of purely free markets — what he called "ruinous competition." It is hard to argue that Morgan's record of financial consolidation did not contribute to economic stability — or, to put it more precisely, to moderate endemic instability. In those postwar decades of phenomenal national growth, there of course was a price to be paid for the frantic cadence of capitalist development. The dependence on gold and on foreign investment precluded easier money and credit for farmers and smaller businesses, to pick two conspicuous examples, and that in turn helped swell the ranks of political opponents of laissez-faire economics and advocates of government regulation.

But a price compared to what? The U.S. would remain a debtor nation until 1913, and without the power and the personal and professional integrity of a man such as Morgan and the best of his colleagues, the incredible rise to international strength might have been a feat deferred or perhaps a destiny unfulfilled.

Rockefeller's creativity did as much to shape the future of the national economy as Morgan's. Starting with little more than the conviction that he would be successful, that his success was ordained, Rockefeller at the age of 14 was on his own, tithing to his church and supporting his mother and younger siblings. First clerking in a commodity house in Cleveland, he shortly went into business himself, where he displayed a rare tenacity. It was the discovery of oil in western Pennsylvania in the late 1850s that pushed Senior (as Chernow refers to him, once a junior came on the scene) toward what would be his commercial conquest of the petroleum industry. He quickly realized that refining the oil that would revolutionize the illumination industry in the U.S., rather than getting it out of the ground, was the key to major success. In a variety of partnerships that he made and unmade, Rockefeller began buying up refineries in Cleveland using little else for credit than a reputation for trustworthiness. He soon saw that vertical consolidation was the path to industrial empire: Owning the barrels to move the oil from the fields, then building the rail tanker cars to move it in bulk to his refineries (while finagling rebates from the railroads for the most advantageous fees, not illegal until the late 1880s, if not considered entirely cricket), and then selling the refined kerosene to consumers.

Rockefeller concentrated his formidable energies on rationalizing the embryonic petroleum industry, mini-

mizing inefficiencies, and developing economies of scale. He was an implacable dynamo, buying out other refiners or beating their prices with take-no-prisoner business tactics. He was not unreasonable, however, often paying prices he knew were exorbitant. By 1880, more than 90 percent of the nation's refining capacity was in the hands of his Standard Oil, reducing the price of kerosene to customers drastically. He was an unabashed monopolist, and if he crushed his adversaries, he did so no more brutally than his competitors, and generally stayed within the often gray boundaries of prevailing law and ethics. The final public judgement of a ruthless and predatory capitalist on Rockefeller came, as it happened, from the daughter of an oil producer whom Rockefeller had put out of business: Ida Tarbell's articles on the rise of Standard Oil, published in 1904 in *McClure's* magazine, did as much as any journalism to give the "muckrakers" their potent reputation.

Rockefeller's inventive creation of the Standard Oil trust spread that principle of business organization across America's landscape. Trusts blossomed in nearly every major industry and commercial sector. Power begets in time an equal and opposite power, and in 1911 the Supreme Court ordered that the Standard trust be dissolved. This chapter of political reform, of course, is known to every schoolboy. The populist antitrust assault energized by President Theodore Roosevelt also struck at Pierpont Morgan's Northern Securities railroad combination, with the Supreme Court's eventual decision against the banker. The age of the titans was waning.

In *Morgan*, Strouse summarizes the dilemma that industrial concentration presented:

> On one side were those who saw the market dominance and ruthless efficiency of the new corporate giants as a sinister threat to individual liberty. Railroads and industrial leviathans were charging monopoly prices, driving competitors out of business, removing control of local enterprise from resident communities, ignoring labor's demands for fair wages and humane working conditions, and earning enormous amounts of money. Flagrant abuses of corporate power . . . and the steady flow of commercial cash that purchased political favors, substantiated the popular conviction that big business violated the natural order of exchange in a free society. On the other side were those who saw the natural order of things in a different light. The United States was no longer a Jeffersonian nation of farmers and small producers working "perfect" competitive markets. . . . With no governmental guidance or regulation, private enterprise was opening up jobs and fostering social mobility on an unprecedented scale, and private bankers were raising previously unimaginable amounts of money. The industrialists and financiers who were shaping this new economic order regarded it as natural and inevitable, and wanted freedom to continue.

The economic and financial triumphs, and defeats, of Rockefeller and Morgan were fundamental in creating the nation's vast muscle. The pair's

enduring legacy, however, would be their philanthropy and cultural benefactions, particularly Rockefeller's. Both men were generous in ways modest and majestic.

Among his extensive civic and philanthropic activities, Pierpont Morgan was a trustee of the American Museum of Natural History from its founding in 1869; in the 44 years of his connection with the museum, he was treasurer, vice president, and finance committee chairman, and he donated magnificent and myriad collections he had purchased. Morgan was also a trustee of the Metropolitan Museum of Art. And he built what would become the magnificent Morgan Library to house the rare art and artifacts the collection of which became his avocation.

The many millions of dollars that Morgan contributed to the nation's cultural life, however, were exceeded by the scope of Rockefeller's philanthropy and the corporate structure he fashioned for social-welfare benevolence, the Rockefeller Foundation. From his youthful support of the Baptist church and its affiliated organizations, he devoted vast amounts of time and energy to philanthropic activities. After the Civil War, his "special solicitude for black welfare," as Chernow writes, included continuing money and support for what would become Atlanta's Spelman College, renowned for the education of black women. He founded the University of Chicago and was a source of development money for decades, establishing it as one of the nation's premier schools. He established the Rockefeller Institute for Medical Research (now Rockefeller University), which would have a dramatic influence in modernizing medical research and under the auspices of which the scourge of the South, hookworm, was eradicated.

These charitable enterprises, careers in themselves and intrinsic to his belief in the duty of religion, would in his later years help to ameliorate the reputation of capitalist exploiter that his success had hung on him. Before his death in 1937 in his ninety-eighth year, Rockefeller attained the popular image of an avuncular civic saint — which is as superficial a characterization of the man as is capitalist tyrant.

The many millions of dollars that Morgan contributed to the nation's cultural life, however, were exceeded by the scope of Rockefeller's philanthropy.

Jean Strouse's biography was more than a dozen years in the research and writing. Previously the biographer of Alice James, the sister of William and Henry, Strouse has placed her man in vivid historical context. It was a period of monumental achievement. And of dizzying excess: In 1883, William K. Vanderbilt's wife, Alva, held a costume ball "that gave free rein to the fantasies of New York's social elite: Alva dressed as a Venetian princess accompanied by live doves, her husband as the Duc de Guise; her brother-in-law, Cornelius, came as Louis XVI, and his wife as

Edison's electric light. There were sixteen more Louis XVIs, eight Marie Antoinettes, seven Marys, Queen of Scots, one King Lear, one Queen Elizabeth, assorted Scottish lairds and Valkyries — and General and Mrs. Ulysses S. Grant in ordinary evening dress." As indefatigably as Strouse has followed Pierpont Morgan down the years, a reader may at the end find him elusive — swathed in a privacy that even so skillful a biographer cannot entirely penetrate. That reserve, as it were, speaks eloquently of the man. It is hard to conceive of any biographer being able to present him more three-dimensionally than Strouse has. Her portrait is all the more engaging for the fact that she initially found Morgan's detractors more convincing: "I had been looking for a modified, human-scale version of the 'boss croupier' of Wall Street — the cynical tycoon who subjected the entire U.S. economy to the 'psychopathology of his will' — and that was not what I had found."

The Rockefeller he discovered in his research was not the man of stereotype, "taciturn and empty." Rather, he was analytical, articulate, witty.

Ron Chernow, who won a National Book Award for *The House of Morgan*, has in *Titan* a fundamental problem with John D. Rockefeller Sr. This may be the result of a thoroughly contemporary secular outlook: Chernow cannot accept that Rockefeller's omnipresent religious faith was genuine, or at least not incongruous with the intensity of his material pursuits. When he was contemplating writing this biography, Chernow says, he noted how the vast Rockefeller bibliography "betray[ed] minimal post-Freudian curiosity," especially about his private life, and that he would not be able to write about the man "unless I heard his inner voice — the 'music of his mind.' " (Mayday! Mayday!)

The Rockefeller he discovered in his research was not the man of stereotype, "taciturn and empty." Rather, he was analytical, articulate, witty. But Chernow's discovery of flesh and blood behind the mask of popular presentation was not in the end sufficient to get the biographer beyond judging Rockefeller "an implausible blend of sin and sanctity." Chernow cites with seeming agreement the opinion that Rockefeller's philanthropy was an effort to "fumigate his fortune." The biographer resorts often to a promiscuously journalistic use of such pejorative descriptions of Rockefeller as a creature of "greed" and "fiendish cunning" and even as "evil." Chernow invokes these indicting labels as if they are self-defining. Is "greed" really a useful or accurate term to encompass so extraordinary a career as Rockefeller's?

While Chernow contends that John D. on several occasions lied about railroad rebates, for instance, and had to be aware of instances of political bribery, though mostly after he had retired from operational direction of Standard, the ambitious reach of the

biographer's indictment fails to match the evidence he adduces. Baffled by Rockefeller's integration of faith and pursuit of wealth, Chernow summons Max Weber (*The Protestant Ethic and the Spirit of Capitalism*) to help explain the phenomenon. But that is not satisfactory for Chernow, and he wonders if Rockefeller did not create "parallel" realities in order psychologically to keep from toppling over, so to speak, at the supposed contradictions of his character.

Finally, Chernow writes, "We are almost forced to posit, in helpless confusion, at least two Rockefellers: the good, religious man and the renegade businessman, driven by baser motives." That convenient dichotomy represents a failure of historical imagination and comes close to disfiguring *Titan*. Sculptor Paul Manship in 1916 was hired to execute two busts of Rockefeller. "In one, the titan seems a saintly figure, thin face upturned, eyes lifted meekly heaven-ward — a highly unusual bust for a magnate," writes Chernow. "And in the second bust, Manship sculpted Rockefeller's harder look, face stern and lips tightly compressed. The two sculptures side by side form a composite portrait of Rockefeller, forever torn between heaven and earth, earthly gain and eternal salvation." In that sentence lies the inability of the biographer to grasp his subject. John D. Rockefeller Sr. was never "torn between heaven and earth, earthly gain and eternal salvation" — the fact that he was not is a key to his granitic strength. Missing this is a weakness of Chernow's book.

Biography, it is said, has now displaced the novel in literary esteem and in popularity. That means biography must assume a portion of fiction's function — of truth telling, in the sense of revealing us to ourselves. Oddly, this may be more difficult for the biographer than for the novelist. The latter is at liberty to add to or subtract from his creation to fashion the "truest" character. The biographer has only what the past is willing to tell, which is limited and frequently contradictory. Thus, the best a biographer may be able to do is conscientiously to sort out the facts and the acts of his subject's years in the matrix of his subject's times. If at the end, the facts still are limited and actions remain contradictory (or perplexing, much the same), that may be the deepest the biographer can validly excavate. That is no small thing, and probably as revealing as any amount of interpretation.

Hero and Oddball

By Christopher Caldwell

Andy Marino. *A Quiet American: The Secret War of Varian Fry*. St. Martin's Press. 403 pages. $26.95

Varian Fry may be the great American civilian hero of World War II — although by the time the Japanese bombed Pearl Harbor in December

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1941, his political activities against the Axis had ended. In 1996, he became the only American to be named Righteous Among Nations by Israel's Yad Vashem Holocaust memorial — although few Americans know of the dangerous activities for which he was honored.

As the Marseilles representative of the New York-based Emergency Rescue Committee (Emerescue) from August 1940 to September 1941, Fry aided 4,000 refugees from Hitler. He was responsible for the escapes of from 1,200 to 1,800 prominent European writers, artists, intellectuals, and politicians specifically targeted by the Gestapo, most of them Jews. They included Heinrich Mann and his nephew, the historian Golo Mann; Lion Feuchtwanger; Franz Werfel; the Hitler biographer Konrad Heiden; Marc Chagall; and the sculptor Jacques Lipchitz.

He drifted into political journalism. In May 1935, visiting Berlin as the new editor of the New Age *magazine, he witnessed the first of Nazi Germany's bloody pogroms, and wrote it up for the* New York Times.

Those unfamiliar with Fry's 1945 memoir *Surrender on Demand* may wonder just how dangerous his activities in Marseilles really were — whether he was truly a death-defying solo liberator, or simply the public face of an admirable but risk-averse charity. In *A Quiet American*, Andy Marino, a freelance historian in London, sets out to give a meticulous narrative of exactly what Fry did in Marseilles. Marino's subject looms larger with every detail.

Fry, born in the New Jersey suburbs in 1907, had difficulty getting his life on track. It could be argued that, except for his 13 months in France, he never did. Sensitive, independent, haughty, he left Hotchkiss in disgust at its hazing rituals, which were directed at him with a particular intensity. At Harvard, he founded, with his friend Lincoln Kirstein, the important literary quarterly *The Hound and Horn*, and married (after a homosexual stage) Kirstein's sister Eileen.

He drifted into political journalism. In May 1935, visiting Berlin as the new editor of the *New Age* magazine, he witnessed the first of Nazi Germany's bloody pogroms, and wrote it up for the *New York Times*. He devoted himself increasingly to the anti-fascist cause but was unpopular within it, largely because he was fiercely anti-Communist (not merely anti-Stalinist) as well. He was fired from the Spanish Aid Committee set up to combat Franco when he tried to purge its Communists. He wrote several books on global affairs, and by 1938 was warning in his lectures of a "Second Great War."

Fry made contact with the American Friends of German Freedom, founded by the University of Newark's Frank

Kingdon, the theologian Reinhold Niebuhr, and the German Social Democrat Paul Hagen. At a fund-raiser three days after France's surrender in June 1940, Thomas Mann's daughter Erika warned that of the hundreds of thousands of refugees now fleeing south into unoccupied "Vichy" France, artists and intellectuals were in special trouble. The problem was that France's surrender treaty obliged the "Free" French to deliver to the Gestapo any foreign citizens Germany requested — usually Jews and public opponents of the regime. So Emerescue was founded, and Fry volunteered to be its man on the ground in Marseilles. The State Department promised to cooperate by issuing visas to the more famous of the refugees. Fry arrived in August 1940 to report on refugee conditions, look for some 200 refugees who were on a list compiled in New York, and set up an operation that could continue his work once he left. That was supposed to take three weeks.

But the situation proved both more dangerous and more promising than Fry had anticipated. It was impossible to tell whether France was simply a nation subjugated by the Nazis or a semi-free country that had forged an alliance with them. On one hand, Fry found the "overwhelming majority of the French" people anti-Vichy. Sympathetic police would warn him of raids, and one even shared (for a price) the Gestapo's round-up list. On the other, France had a long tradition of anti-Semitism in mainstream politics; as anti-Semites were promoted into major law enforcement positions, Vichy was soon outstripping even the Nazi-occupied zone in its issuance of anti-Jewish decrees. Sometimes the authorities would leave Fry alone; sometimes the blue-bereted goons of the Jeunesse Populaire Française would descend on the offices he set up in a hotel on the Vieux Port.

A number of bureaucratic catches had turned France into a Kafkaesque "man-trap," as Fry put it. As soon as Germany attacked, France herded all German citizens — this meant primarily Jews and anti-Nazis — into concentration camps, as potential Nazi spies. They frequently escaped only when their captors retreated to avoid advancing German infantry. For some who avoided arrest or capture, Fry could get visas from the American consulate. But emigrants also needed to apply for exit visas from France, and all such applications were forwarded to the Gestapo. Fry's clients could cross the border into Spain without exit visas. But they would then be arrested for lacking a *transit* visa — and returned, via France, to a German concentration camp. To get a transit visa, they had to show an

The problem was that France's surrender treaty obliged the "Free" French to deliver to the Gestapo any foreign citizens Germany requested — usually Jews and public opponents of the regime.

"onward visa" from a *Portuguese* port. The Siamese consulate issued these, but there was no way to get from Lisbon to Siam, and the Gestapo was active in kidnapping fugitives who stayed in Portugal too long. The Chinese gave out stamps with two huge ideograms that read "Under no circumstances is this person to be allowed entrance to China." At least they looked like visas — but these, too, were rendered useless when Portugal stopped receiving refugees without prepaid boat tickets.

One of the last things Dubois told Fry was that none other than the U.S. consulate was helping Vichy police to build a case against Fry. America did not want to burn its bridges with Vichy.

It became apparent that Fry would get next to no one out of occupied France without resorting to illegality, and that it would take far longer than anticipated. As soon as Fry began to work underground, he was courting the death penalty. He got phony passports from the pre-invasion Polish, Lithuanian, and Czech consuls. He sent refugees illegally over the border and through Spain, thanks to an underground railway run by the early French resistance. He broadcast to London and worked with British diplomats in Madrid to evacuate British troops trapped in southern France. Later he would help two of his employees set up Resistance cells. By the end of the year, Fry had succeeded in sending 300 people to safety.

Corruption was common, and many in Marseilles played both sides. Typical was Georges Barellet, who rented out his Hotel Bompard as a women's concentration camp. He got 15 francs a day from the Germans for every woman, but he also confiscated inmates' ration cards, and sold their food back to them at three times the market price. He would, however, release any of them for several thousand francs — and Fry used him on occasion.

Responsibility for much of the derring-do was given to Fry's right-hand man, a German Jew who had fled his country in 1933, then worked with anti-Mussolini groups in Italy and fought in the Spanish civil war before joining the French army. A cheery, carpe-diem sort who liked to spend his lunch breaks at whorehouses, he made contacts with the more pro-British of Marseilles's two big Mafia families (the other was pro-fascist). Working under the assumed name of Alfred Hermant, he was hunted by the Gestapo for his anti-fascist activities. When the police finally showed up at Emerescue's offices, he escaped to the United States — where he became an architect of the Marshall Plan and one of the giants of twentieth century American social science. He was Albert O. Hirschman.

Fry had to work in a climate of minimal trust and absolute unpredictability. The petty thief Fry hired to launder money for him (to circumvent Vichy's phony exchange rate) turned out to be

a Gestapo informant, and Fry took out a contract on his life. (The crook fled.) German officers appeared in the cemetery that the refugees used as a crossing into Spain. The egomaniacal novelist Lion Feuchtwanger described the whole escape network, complete with routes, to the *New York Times* as soon as his boat docked in America. The sympathetic police inspector Dubois, who had kept Fry informed of operations against him, was demoted.

One of the last things Dubois told Fry was that none other than the U.S. consulate was helping Vichy police to build a case against Fry. America did not want to burn its bridges with Vichy, and many in the consulate and State Department were openly sympathetic. Consul Hugh Fullerton, Fry's nemesis, bragged that the American Foreign Service in France had got rid of half its Jewish employees. The consulate dragged its heels in filling out visas. When Fry convinced Marc Chagall to move to Marseilles and wait for a boat out, Fullerton wouldn't even give Fry a letter to get him a Swiss visa. Chagall was soon arrested (and released only on Fry's intervention). When Fry delivered a report on impending agreements between France and Germany to the American embassy — an act for which he could have been executed as a spy — the embassy sent it back to him by mail, and it was read by the censor.

The vice consul, Harry Bingham, was sympathetic to Fry's work. He hid Golo Mann at his villa and sent his own car to fetch Feuchtwanger from the concentration camp where he was being held. Largely because of such activities, Bingham was ordered to Lisbon and sent home. The State Department pressured Emerescue to recall Fry — and the pro-New Dealers who made up the board were inclined to comply. Eleanor Roosevelt wrote Fry's wife, "I think he will have to come home because he has done things which the government does not feel it can stand behind."

When Fry was deported by Vichy authorities in September 1941, his life fell apart. His marriage ended. Soon after, he was fired from Emerescue, which had grown impatient with his intensity, particularly his insistence that only he understood the refugee problem in France. (Correct, as it turned out: He was never replaced.) He served for a few months as assistant editor at the *New Republic*, where he wrote, in December 1942, an extraordinary document called "The Massacre of the Jews," the first piece of journalism to give hard evidence that Hitler had launched a program to exterminate the Jews of Europe. But Fry resigned weeks later after an argument over the Moscow show trials, damning *TNR*'s other editors as fellow travelers. He lasted a few months at *Common Sense*, a few more at the *New Leader*. He grew increasingly conservative (without describing himself as such), joining the American China Policy Association and the Congress for Cultural Freedom, and showing enough sympathy for Joseph McCarthy that Mary McCarthy would describe him as "a perfect madman."

He taught creative writing at CCNY for a year. He latched on as a writer/consultant for Coca-Cola, but was fired when he turned one of his reports into a taunting account of the stupidity of the company's board of directors. He taught Latin and history

at the Episcopalian Day School in New York, but was fired when he fought with its headmistress, the Reverend Mother Ruth. Fry confessed himself increasingly "baffled by his own behavior." After bouts of hypochondria and paranoia, after psychoanalysis, after volunteering the story of his sex life to Alfred Kinsey, he told his doting second wife to "go get a divorce" and died of a stroke a few weeks later, just shy of his sixtieth birthday.

One reason Fry's heroism has been hard to capture is that most of what he did consisted of organizing paperwork and working the visa department.

Marino aptly describes what it was about Fry that made him so deft at heroics and so bad at regular life: "He felt terribly scared and isolated," Marino writes of the Marseilles period, "but at the same time he found himself exhibiting a sort of nothing-to-lose daring that thrilled him. He was acting very unlike himself, and he was getting to like it." Beyond that, Marino adds little new material to what we know of Fry's adventure from *Surrender on Demand*. He merely torques up the drama with novelistic tricks — and gilds the lily of Fry's undoubted heroism with a few dubious claims. Marino awards Fry credit for what was actually a pro forma Vichy report on concentration camps: "Vichy had somehow been embarrassed into making a gesture, and the likelihood is that Fry's efforts were the determining factor, the first coherent outcry against what would soon develop into full-fledged Holocaust." Far from having major influence over Vichy, Fry was regarded as a menace in every corner of Vichy. Moreover, to claim the only reason France's Nazi collaborators kept their concentration camps going was that no one had made a "coherent outcry" against them is preposterous.

One reason Fry's heroism has been hard to capture is that most of what he did consisted of organizing paperwork and working the visa department. This is less vividly heroic than risking one's life in battle, but Fry understood that the road in and out of the death camps passed through the visa department, and he was modest enough to make his stand there, even if others might not understand the glory of it.

Was he guilty of passing over the anonymous millions in order to save a few big-ticket intellectuals and artists? Certainly, he sent cables telling his Emerescue allies, "PLEASE MAKE THEM REALIZE WE HAVE UNDERTAKEN IMMENSE TASK SAVING CULTURE EUROPE." And there was indeed a grim triage going in Marseilles, under which Fry's assistants would vet candidates to determine which of them were "artistic" enough to have their lives saved. But this was far from Fry's fault. It was nearly impossible to get the sluggish State Department to issue visas for anyone but the already famous, and it was hard to get Emerescue to fork out money for anonymous victims. As one director wrote to Fry, "If Albert

Einstein could be brought to America today, we could raise one million within a short time by exhibiting him throughout the country. Casals is probably worth one hundred thousand, Picasso fifty thousand. Your trio [Werfel, Mann, Feuchtwanger] brought in thirty-five thousand. Since their arrival we have had nothing good to offer the public."

No, there was a war on. Fry's choice was not between saving a thousand artists and saving a million anonymous refugees, but between saving a thousand artists and going home having saved no one. He's a hero because he stayed. The great gift Fry brought to his task was a keen understanding of human imperfection — rather a desideratum in Nazi-occupied France. He applied this knowledge not just to his clients' persecutors but to his clients themselves. Of Walter Mehring (the Berlin poet who moved to Hollywood, bought a Packard roadster, and never spared a thought or a cent for those he'd left in Europe), of Heinrich Mann (who stopped writing, and spent the last years of his life drawing doodles of women with big breasts), of Lion Feuchtwanger (whose idiotic tale-bearing about Fry's rescue network could have cost dozens or hundreds their lives), Fry felt, as Marino puts it, that "just because these people had been persecuted, it was not fair to expect them to be any greater, morally speaking, than other human beings."

An unwillingness to cut himself similar slack was the source of both Fry's heroism and his maladjustment to peacetime life. If he was without honor in his own country, it's understandable. Fry was impossible to work with, mentally troubled, locked in himself. But let us not forget that he was a prophet, too, and put himself in harm's way to prevent the future he saw unrolling before him. Not the ideal person, maybe. But certainly the kind that every generation everywhere has always had too few of.

Father of *The Godfather*

By JOHN PODHORETZ

MICHAEL SCHUMACHER. *Francis Ford Coppola: A Filmmaker's Life.* CROWN. 536 PAGES. $30.00

IN 1970, an insanely ambitious 31-year-old whose grandiose effort to create a new motion-picture studio in San Francisco was proving difficult, what with all the hippies he had hired stealing his equipment to sell for drugs, got an offer from Paramount Pictures. It was a chance to write and direct the Hollywood version of a book the young filmmaker read and quickly dismissed as "a popular, sensational novel, pretty cheap stuff." The novel was full of gore and sex, which this personally conservative scion of the 1960s found tasteless and offensive — not to mention retrogressive and far too mainstream. Even though he had worked anonymously on a nudie or two in the early 1960s and a few horror movies

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while he learned his craft, he now fancied himself a revolutionary artist in the manner of the self-conscious geniuses of the European "new wave."

But the writer-director was in debt by $300,000 and had no other prospects. He turned to his quiet, intense assistant — a director manqué himself whose dream project was a hallucinatory epic about the Vietnam War shot on Super-8 home-movie film — and asked what he should do.

"Take it, Francis," the assistant said. "We're broke."

The assistant, who showed here the first spark of the commercial sense that would later make him the most successful man in the history of show business, was George Lucas. The filmmaker was Francis Ford Coppola. And neither they nor anybody else who had anything to do with *The Godfather* would ever come close to reaching the artistic heights they achieved with a project undertaken because its director needed the money so he could make so-called "personal" films.

Now, 28 years after its release, *The Godfather* has firmly established itself as the single greatest achievement in the history of film. (Some still argue for *Citizen Kane*, but they're wrong.) It's the peerless cinematic epic, the story of the destructive power of love and family. Coppola jettisoned the pulpier aspects of Mario Puzo's novel, which wasted countless pages on roman-à-clef renderings of Frank Sinatra and Dean Martin, to focus in on the tragedy of Michael Corleone. Slowly, magisterially and heartbreakingly, the young hero back from World War II loses his soul because he cannot escape the call of his blood — and it is the particular punishment for his father Vito, who had hoped that Michael would transcend the thievery and thuggery into which Vito had descended as a young man, that he must watch sadly as his son is inexorably transformed into a colder and more ruthless version of himself.

It was Puzo's wily conceit that these Mafiosi weren't just criminal bums but Roman emperors and generals in modern garb, fighting over turf and position not for money but for the greater glory of their family names. But it was Coppola who took that conceit and made it into a human drama both amazingly intimate and grandly horrifying. Coppola gives us the same kind of exquisitely careful detail in the sequence when the wounded Vito is presented hand-made get-well cards by his loving grandchildren after he is nearly assassinated as he does in the famous climax when Michael renounces Satan during the baptism of his godchild even as his henchmen are simultaneously wiping out his rivals all over New York City.

In Coppola's rendering, even in a new world where men like Michael are free to choose the lives they wish to lead, the demands of family and tradition win out — and are so powerful that they can destroy everything that's good in a man who had greatness in him.

The Godfather has, by my reckoning, but a single flaw — the anachronistic exchange between the newly minted Mafia chief Michael and his future wife in 1947 when she protests, "Senators and governors don't have people killed," and he responds, with Nixon-era cynicism, "Now who's being naïve, Kay." That's 12 seconds out of 175 minutes, and it's not surprising that the flaw comes when its writer-

director decides to come out from behind the curtain and give the audience a little wave just to remind them that he's there and has a Big Point to make.

The facts surrounding the production — that Coppola took it on grudgingly, found the whole experience hellish, and turned in an alarmingly brief first cut little resembling the three-hour epic we all know and love — are testimony to how accidental an art form the movies really are. Movies become works of art — which is to say, coherent and unified creative visions that enlarge our sense of humankind and the world — largely by accident. Films are often astounding works of craftsmanship, as intricate and studied in every detail as a medieval cathedral. They are brought into being with a meticulousness that would surprise most viewers; one Hollywood rule of thumb is that it takes an entire day of shooting to get two usable minutes of finished film. Audiences are fooled into believing they are watching something drawn from everyday life when they are in fact passive witnesses to studied formal pageantry staged down to the shaft of light that hits an extra's face 30 feet behind the two central players as they kiss.

It takes hundreds of people to make a movie, and dozens of them are artists in some sense of the word — actors and writers and cinematographers and editors and costume designers and set designers, all looking for creative fulfillment and all with lots of ideas about how to get theirs.

Throughout the making of *The Godfather*, Coppola was not the proud leader of a team that worked as one to fulfill his vision. He was a man at war. The production was a backstabbing, backbiting nightmare, and Michael Schumacher relates this oft-told Hollywood tale well in his gentlemanly new biography of Coppola.

Coppola had to fight tooth and nail to cast the unknown Al Pacino as Michael and the has-been Marlon Brando as Vito. The Brando idea seemed particularly bizarre to studio boss Stanley Jaffe, because the 1950s legend was only 46 years old at the time and wandered around Hollywood with a long blond ponytail and a Japanese kimono. "As president of the company," Jaffe ordered Coppola, "I will no longer allow you to discuss it." In response, Coppola later said he "stood up as if I were a lawyer pleading for someone's life," claiming that alone among the world's actors, only Laurence Olivier could assay the role, and Olivier was sick at the time.

Audiences are fooled into believing they are watching something drawn from everyday life when they are in fact passive witnesses to studied formal pageantry.

Then, as Schumacher relates, "Clutching his chest as if having a seizure, [Coppola] collapsed to the floor. The sight of Coppola writhing on the carpet, quite possibly suffering a heart attack as the direct result of his

highly charged defense of his convictions, unnerved Jaffe to the point of caving in."

The woes never ceased. Coppola developed an ugly relationship with his director of photography, Gordon Willis, who groused constantly about how Coppola's efforts to stage the scenes interfered with the complexities

The movie was deliberately shot in darkness to suggest the darkness of the Corleone family profession, using antiquated equipment in order to get the "dated" feel of the 1940s and 1950s.

of the film's lighting — the movie was deliberately shot in darkness to suggest the darkness of the Corleone family profession, using antiquated equipment in order to get the "dated" feel of the 1940s and 1950s. "Francis didn't realize you can't get art without craft," Willis said pompously. Coppola said Willis hated and misused actors because he wanted them to stand in one spot and deliver their lines like mechanics.

The director hired an editor named Aram Avakian who began spying on Coppola for Paramount, sending back bulletins about how badly the director was doing — in hopes of getting Coppola fired so that Avakian, who had directed a couple of movies himself, could take the reins. Meanwhile, Brando and James Caan, who played Sonny, spent a great deal of time on the set dropping their pants and mooning the other actors.

When the time came for Coppola to put the movie together, he submitted a two hour and 20 minute version. He did this either because he thought he had to bring it in short, so that it wouldn't be taken away from him and edited by somebody else, or because he didn't know what he had on his hands. Either way, the studio actually insisted he lengthen the film — perhaps the only time in history such a demand has ever been made.

It was a horrible, terrible, awful experience — but then about a year later the entire team (minus Brando) gathered together a second time to make *The Godfather, Part II* — by consensus the best sequel ever made. Even Gordon Willis, who had been so dismissive of Coppola, returned. Like the original, *Part II* won the Oscar for Best Picture. Coppola had at the same time served as executive producer on Lucas' second film, *American Graffiti* — which cost a paltry $750,000 and took in more than $60 million, making it the single most profitable film up to that time.

Coppola had also used his clout to make one of those "personal" films for which he had done *The Godfather* for money, a highly regarded box-office disappointment called *The Conversation*. But, as Schumacher describes in an eye-opening chapter, *The Conversation* proved an even more chaotic and elusive moviemaking experience for Coppola than the giant epics he had

been working on, and he ended up relying heavily on his editor Walter Murch to turn the scraps of film he had produced into a film that made even rudimentary sense. *The Conversation*, an unsettling film with a magnificent performance by Gene Hackman, does actually cohere — which suggests that Murch ought to be considered the Maxwell Perkins of Hollywood.

But even Murch couldn't save Coppola from himself when the time came to make *Apocalypse Now*. Six years after the completion of *The Godfather*, when he was the most celebrated and powerful filmmaker in the world, Coppola had a nervous breakdown in the jungles of the Philippines restaging the Vietnam War, which he did not understand nor care to understand. The making of *Apocalypse Now* is the heart of darkness in Schumacher's biography — and, indeed, the heart of the disaster that befell Coppola and his fellow superstar American directors in the 1970s. Freed from financial restraint and lionized by an adoring media and public as the modern-day equivalents of the poets and novelists who ruled the taste classes of the Victorian era, Coppola and other American hotshots (Peter Bogdanovich, William Friedkin, and later Michael Cimino) all went out and basically destroyed themselves making ruinously expensive vanity projects ostensibly in the name of art — but really simply because they had the power to do so.

Coppola had the audacity to compare his three-year experience filming his fascinating but unsatisfying *Apocalypse Now* with the 13-year tragic struggle that cost 58,000 Americans their lives. His marriage, which was unusually good and stable by show-business standards, nearly collapsed when his wife discovered he was having an affair in the Philippines and he simply refused to end it. When Martin Sheen, the star of the picture, had a heart attack on the set and had last rites administered to him, Coppola went momentarily mad. He was captured on film in a marvelous documentary called *Hearts of Darkness* wandering around ranting, "He's not dead unless I *say* he's dead." Sheen didn't die, of course, but Coppola had crossed a rubicon of grandiosity with *Apocalypse Now* — as exemplified by his treatment of Sheen's brush with lethe — and there was no bridge back.

The portrait of Coppola that emerges is of an immensely attractive man of heart and courage who somehow always thought he was made for more important work than The Godfather.

Coppola chose to follow *Apocalypse Now* with a little musical about a few people out for the night in Las Vegas, but his outsized ambition got the better of him and he ended up spending the then-ungodly sum of $26 million (the equivalent of more than $100 million today) on a leaden trifle called *One*

From the Heart. It had only four major speaking parts and grossed less than $1 million in a theatrical run that barely lasted three weeks. *One from the Heart* brought an end to Coppola's most florid fantasy — that he could run a movie studio just like the good old days, only this time dedicated to small art films.

Still, there was something grand and noble in Coppola's failure. What made Coppola different from almost every other Hollywood spendthrift was that he constantly put his own money on the line. He wanted artistic control and was willing to sacrifice for it. And that same money allowed him to serve as a remarkably selfless mentor to dozens of writers, directors and actors, many of whom took terrible advantage of his large-heartedness over the years.

He's made a few good movies in the past 20 years — the little-seen Vietnam-era story *Gardens of Stone*, which has one of the most moving final scenes ever filmed, is a particular gem (and a particularly sad entry in his canon, as his son Gio died in a boating accident during its filming). He's made some bad ones too. But mostly what's happened to Coppola is that he's become negligible — a man of immense talent who can still work in high style but can no longer think in grand scale.

The portrait of Coppola that emerges from the pages of Schumacher's workmanlike book is of an immensely attractive man of heart and courage who somehow always thought he was made for more important work than *The Godfather*. And that is his tragedy, because Francis Ford Coppola made a work that cannot be equaled — a true work of art in a medium in which true works of art are almost impossible to come by — yet never really respected himself for having triumphed at so miraculous a task.

LETTERS

Howard Gardner, Unfiltered

SIR, — The October/November 1999 issue of *Policy Review* contained an attack on my work and on me by Mary Eberstadt. Though much of the article, "The Schools They Deserve," centered on my recent book, *The Disciplined Mind*, Eberstadt failed to indicate why a book about precollegiate education should bear that title and focus on the scholarly disciplines. I therefore begin my response by describing the rationale and argument of the book.

Too much of recent discussion about American education has focused on technical and instrumental aspects — vouchers, unions, length of school year, and the like. Too little has focussed on why we should educate students at all. Formal schooling has several purposes, of course, but I believe its most fundamental purpose should be the inculcation of the major ways of thinking that have been crystallized in the disciplines. Specifically, I argue that, by the completion of secondary school, all students should have a reasonable sense of what it is like to think scientifically, mathematically, historically, and artistically (that is, to have command of at least one form of artistry).

Let me give a few examples of what disciplinary thinking is, and what it is not. A mind disciplined in history should be able to apply analogies from one period to another, to evaluate conflicting documents, to analyze possible causes of pivotal events. A mind disciplined in science should be able to dissect an experiment, relate data to hypotheses and hypotheses to theory, and distinguish claims with warrant from those that lack empirical support and those that by definition cannot be subjected to testing. It should go without saying — though I must say it — that individuals cannot master such disciplinary thinking unless they have basic literacy skills, know a body of relevant facts and concepts, and have reasonable habits of study. However, there is no necessity for a common canon, nor for mastery of many disparate facts and concepts. Disciplinary thinking can be acquired — indeed, I believe that it can *only* be acquired — through intensive study of one or more significant bodies of knowledge.

Disciplinary thinking should not be confused, therefore, with taking a specified sequence of courses in a subject area or with accumulating lots of information in an encyclopedic fashion. These pursuits are neither necessary nor sufficient. To inculcate disciplinary thinking, educators must seek to develop the specific skills mentioned above — understanding of hypothesis testing, ability to make appropriate historical analogies, and so forth — and determine whether students are able to exhibit these skills. The acid test is whether students can perform competently not with materials to which they have already been exposed, but rather with new and unfamiliar materials. So,

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for example, understanding of the preconditions that led to the Holocaust should help a student think about the parallels (and non-parallels) to recent events in Bosnia or Kosovo; understanding of the principles of evolution should help a student think about whether genetically-engineered organisms or computer viruses operate by the same principles as classical Darwinian (or neo-Darwinian) evolution.

Alas, as chronicled in my earlier book, *The Unschooled Mind*, even good students in good schools typically do not exhibit disciplinary thinking. They can reproduce the answers that they have memorized; but they are unable to apply skills and strategies to new materials. Indeed, they approach such materials in ways disconcertingly similar to "unschooled" students who have never studied the discipline.

Let me explain why disciplinary thinking poses such difficulties. The most natural way to think about learning is to assume that we are born with a single kind of mental architecture — let us analogize it to a large barn — and that the purpose of education is to fill that barn with as many items — read "facts, definitions, concepts"— as possible. Most students, teachers, and policy-makers share this belief, as does (I believe) the influential educator E.D. Hirsch.

Disciplinary thinking is not natural, however. In many ways, our spontaneous forms of common sense and common nonsense are "non-" or "anti-disciplinarian." Science flies in the face of appearance and common sense (the earth is not flat; we are not created at one historical moment) and so do the other disciplines (negative numbers do not exist in the world; people who look very different from us may experience just what we feel, etc.). To extend the metaphor, an education in the disciplines consists of razing the barn, in large measure, and in constructing a set of more complex architectures. Each discipline has its own architecture, and particular facts and concepts only acquire significance within that architecture. Otherwise, in Alfred North Whitehead's appropriate figure of speech, they are simply "inert." Happily, however, the disciplinary walls are permeable, and it is possible to use the same facts in various disciplines and to combine disciplinary methods. Constructing the major disciplinary buildings is hard work but it can be tremendously rewarding, as most disciplinarians will attest; human beings in the contemporary world feel disempowered when they are unable to engage in disciplined thinking.

I must mention one final complicating factor. It would be easier to master the disciplines if all human beings learned in the same way. One curriculum, one pedagogy, and one form of assessment would suffice. However, it is now commonly accepted that individuals do not all exhibit the same intellectual strengths, styles, interests, difficulties, and profiles. Educators can either ignore these differences or take advantage of them. My own view is that it makes sense to try to teach students in ways that are comfortable for them. Moreover, all students benefit when topics and themes are approached in a number of ways. Drawing on my own theory of multiple intelligences, I have sought to show how the very differences in how we think can be an ally of, rather than an obstacle to, good thinking in the disciplines.

While we could decide to forget about training the disciplines, I think that this would be tragic. Built up painstakingly over the centuries, the disciplines represent the best thinking of human beings on questions of consequence — who we are, where we come from, what we can aspire to, what will happen to us, the congeries of topics often summed as "the true, the beautiful, and the good." They alone allow us to make sense of the world and to go on to raise new questions and to make fresh discoveries. Moreover, mastery of the disciplines represents one of the few tasks that schools may be *uniquely* suited to handle. Already, much learning can take place on the Internet. I refer whimsically to the Millennial Palm Pilot which will provide all factual information on oral or written demand. But only steady cumulative work on a number of gritty issues, with regular assessments and feedback on the part of knowledgeable disciplinarians, will bring about some mastery of major disciplined forms of thinking.

The patient reader, who has read not only Eberstadt's attack but also the preceding lines, may wonder which book Eberstadt was writing about. In 15 printed pages, Eberstadt managed to avoid explicating my major argument. Indeed, the word "discipline" is absent! Instead, her argument proceeds roughly as follows:

1. Much of the damage done to American education was done by progressive education.

2. Despite his denials, Gardner represents a contemporary version of the sins of progressive education. As such, he is a contributor to further problems.

3. Gardner claims to be a democrat but actually he is (apparently advertently) supporting an elite education. The students he is concerned about are privileged students who will acquire basics no matter what they study. He is ready to sacrifice the very disadvantaged students that he claims to care about.

As the saying goes, I hardly know where to begin. The account that Eberstadt offers of progressive education is a total caricature, which does not resemble the accounts of responsible historians like Lawrence Cremin, Patricia Graham, and Ellen Lagemann. Progressive education had its sins and its foolishnesses, but the work of Francis Parker, John Dewey, and their followers represented a sincere effort to recognize how children learn, to honor the differences among children, and to build democratic communities. Some progressive practices endure in our country — as they should — but progressivism hardly had widespread influence, as Eberstadt concedes. If anything, the sins of American education should be attributed to the rote drill-and-kill, scattershot processes which have dominated education in this country and which *are much less prominent in our chief competitors in East Asia and Western Europe.*

But in any event, I don't consider myself a progressive or a traditionalist; as should be evident, I partake of several intellectual strands. Basic literacies, habits of hard work, high standards should cut across such rhetorical divides — and I defy Eberstadt to quote thinkers who oppose basic literacies or who espouse laziness or low standards. I sense straw men and women here.

Eberstadt is dead wrong when she

describes the education that I favor as designed just for an elite. Did she fail to understand my subtitle "An education for all human beings"? Precisely because the kind of education I favor has often been withheld from disadvantaged children, I insist on this point. I make no bones about my view that all children ought to learn to think in disciplined ways — that's what education should be about. Only because I know that not all individuals share this vision do I reluctantly embrace the idea of a small number of educational pathways, amongst which families would choose.

Eberstadt attacks not only me but my close colleague Theodore Sizer. In our ATLAS project, carried out jointly with James Comer and Janet Whitla and our respective organizations, we have been developing an educational pathway that features understanding in the disciplines. Eberstadt does not mention the New York and Boston educator Deborah Meier — and with good reason. That is because Deborah Meier is a one-person refutation of Mary Eberstadt's argument. Both in the Central Park East schools in Harlem and in the Mission Hill School in Boston, Meier has constructed an education around important, in-depth study of topics, which yields a disciplined mind. Her ideas and practices have been crucial for Sizer's Coalition of Essential Schools and for my own work with the ATLAS project and with Harvard Project Zero. None of these educational interventions have been directed toward elites, and indeed the chief focus has been on disadvantaged youngsters in public schools around the country. The facts are arrayed against Eberstadt; what is left, untouched, is attitude.

In view of the gap between what I've written and what Eberstadt has critiqued, I hope that readers will turn to my own writings, particularly *The Disciplined Mind* and *Intelligence Reframed*. I have elected not to use my space here to go through her own piece page by page; but I must note that there are errors of fact or interpretation in nearly every paragraph. Those interested in a more extended critique of Eberstadt's words are encouraged to consult my web site:
http:// pzweb.harvard.edu/WhatsNew/whatsnew.htm

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THE AUTHOR RESPONDS,

Professor Gardner, as befits the author of multiple intelligence theory, is himself graced with numerous and extraordinary talents. Here, he exhibits the one called chutzpah.

First, he devotes most of his lengthy reply to a disingenuous defense of "the disciplines," which are — let the record show — no more under siege in "The Schools They Deserve" than poster paints or drinking fountains. Only then does he let fly, in the penultimate sentence of his letter, the grievous charge that "there are errors of fact or interpretation in nearly every paragraph" of my essay — and goes on to say that he has "elected" not to share them with us here!

This see-my-website tactic, which increasingly disfigures public discourse, really must stop. It's obvious what most professors would do if presented with a student paper containing an extrava-

gant accusation of error and no evidence of it, just an invitation to visit a website. Why has this professor resorted to such gambits, when they are so manifestly beneath our readers, our writers, and (in his better moments) Gardner himself?

I have a guess: The educational philosophy he and like-minded colleagues represent is indeed taking a beating these days, and not only in the pages of *Policy Review*.

In response to what substance appears to be present in Gardner's reply, let us begin with the matter of taxonomy: If Gardner is going to vex himself over being placed in the "progressive" tradition, then he ought to know that just about every single other commentator observing his work has characterized it the same way I did (though some, to be sure, prefer to call it "neoprogressive" or "ultraprogressive" instead). But these scholastic distinctions needn't detain the rest of us. Some ducks may insist they are really rabbits, but that doesn't mean the duck-rabbit actually exists.

Second, and contrary to what his letter insists, "The Schools They Deserve" was neither designed nor executed as a personal attack on anyone. Rather, the piece attempted to solve what I regarded as a kind of sociological puzzle: How had it happened that, at the precise time when school districts across the country were embracing new tests, higher standards, and otherwise repudiating progressive educational ideas, those same ideas were enjoying a revival elsewhere, in the elite private schools? Gardner himself, as I and every other observer of this trend has noted, is the preeminent figure in that renascence, so naturally I quoted and explicated his ideas in some detail. But those ideas, if I may be forgiven for saying so, were offered up as mere instantiations of the phenomenon I was trying to describe, not as its platonic form.

That the ideological gap I described between elite schools and the rest does indeed exist is a fact beyond dispute. The trend in most school districts these days, as the *Washington Post* summarized the scene in September, is toward "the 'standards-based movement,' which has seen nearly every state first adopt academic standards then begin creating customized tests to determine whether students have met those standards." At the same time, the educational theories in vogue in the best private schools, where Gardner's popularity is but one case in point, aim in the opposite direction — against grades, against standardized testing, against a canon or particular body of knowledge children must learn, and for practices like student-run classrooms, hands-on, performance-oriented activities, self-assessment, group work: i.e., the familiar progressive project.

So the divide I described is out there for all to see. One does not refute its existence, as Gardner hopes to, by insisting that private schools are not the only petri dishes for progressive researchers; to the contrary, I explicitly noted that "some of those schools are public" and that "there is no shortage of funders or educators interested in trying Gardner's ideas." The fact that educational experiments of this sort are conducted with apparent ease of access on the some of the nation's poorest and most vulnerable students is significant in its own right, and bears reflection.

In the end, I suggested three possible

explanations for the popularity of progressive ideas in elite schools. One had to do with parents and their resistance to bad news — a resistance that arguably increases the more they are paying for it. A second explanation for this popularity was sociological — because most of the students in these schools, enjoying as they do what E.D. Hirsch has called "the second school" at home, are less likely to become casualties of such fads than are other students. A third explanation for progressivism's appeal in such places, I suggested, was institutional. For decades, progressive doctrine has been the reigning educational philosophy in all the best schools of education and among almost all the nation's leading educators. Because of that institutional monopoly, "teachers, headmasters, and others who pride themselves on staying au courant will likewise gravitate to the same ideological home base."

It is plain from Gardner's response that he does not find the question of the popularity of progressivism in elite schools interesting — any more than he is moved by the lack of enthusiasm, to say nothing of occasional outright hostility, toward progressivism in non-elite circles. Certainly he does not offer an explanation to compete with mine. I think he would learn something by looking more deeply into the sources of these contrasting views. For many parents — particularly those with fewer choices and advantages than others — school constitutes the bulk if not the entirety of the opportunity their children have to make something of their lives. Those parents can tell when that opportunity is being squandered.

Professor Gardner "defies" me "to quote thinkers who oppose basic literacies or who would espouse laziness or low standards." A few months ago, he wrote in the *New York Times*, "I don't care that much if one can name the planets" because "one can always request that information from a Palm Pilot." He may not care, but most parents do care, and vehemently. Progressive educators do not understand why, and their failure to empathize is costing them dearly. It is why the progressive vision is losing.

MARY EBERSTADT
Washington, D.C.

The Fifth Branch

SIR, — Bravo Zulu (Navy slang for "job well done") to Loren Thompson of the Lexington Institute for his superb article "Military Supremacy and How We Keep It" (October/November 1999). Thompson did an outstanding job of explaining the need for the United States to reverse its decade-long dismantlement of its armed forces.

After reading Thompson's superb article, I came out with a greater appreciation and clearer understanding of the future roles and missions of the Army, Navy, Marine Corps, and Air Force. The purpose of my writing is to mention the roles and missions of the U.S. Coast Guard when discussing the topic of maritime supremacy.

The Coast Guard may be the fifth and smallest branch of our armed forces, but it nonetheless has a vital role to play in our nation's defense. The twenty-first century will find the Coast Guard on the front lines against some of the threats mentioned in Defense Secretary Cohen's 1999 Annual Report. God bless carrier battle groups and the

F-18, but they are not as effective as Coast Guard cutters are against asymmetrical threats such as environmental terrorism, illegal migration, and illegal narcotics smuggling, to name just a few.

In his 1999 State of the Coast Guard address, Coast Guard Commandant Adm. James Loy used the analogy of a dull knife to describe the readiness crisis confronting his sailors and aviators. He pointed out that even the sharpest knife in the drawer can easily become dull by too much use. For example, deployments of fixed-wing aircraft have more than doubled in the past five years and cutters are now deployed more than 180 days away from their homeports.

The age of the Coast Guard's ships, planes, and equipment is equally troubling. Some of their cutters like the *Storis* first saw action in World War II. Three separate classes of other medium and high cutters along with several fixed-wing aircraft are also approaching block obsolescence in the next several years.

This country's neglect of the Coast Guard must come to an end. The Coast Guard deserves the same treatment as its sister services when it involves the investing of precious tax dollars into rebuilding the U.S. military. Unlike the Pentagon, which received a well-deserved increase in spending for fiscal 2000, the Coast Guard did not fare so well.

The perfect remedy for the Coast Guard's readiness woes is its Deepwater Mission Project. Deepwater is the Coast Guard's plan for modernizing its fleet and aircraft for the twenty-first century. Why Deepwater?

While the demands for Coast Guard assets are increasing, the Coast Guard's capability to meet these challenges is decreasing because of antiquated cutters and aircraft.

President Reagan had it right when he said, "I believe it is immoral to ask the sons and daughters of America to protect this land with second-rate equipment and bargain-based equipment." Unfortunately for all of our branches of the armed forces (Coast Guard included), his words have fallen on deaf ears.

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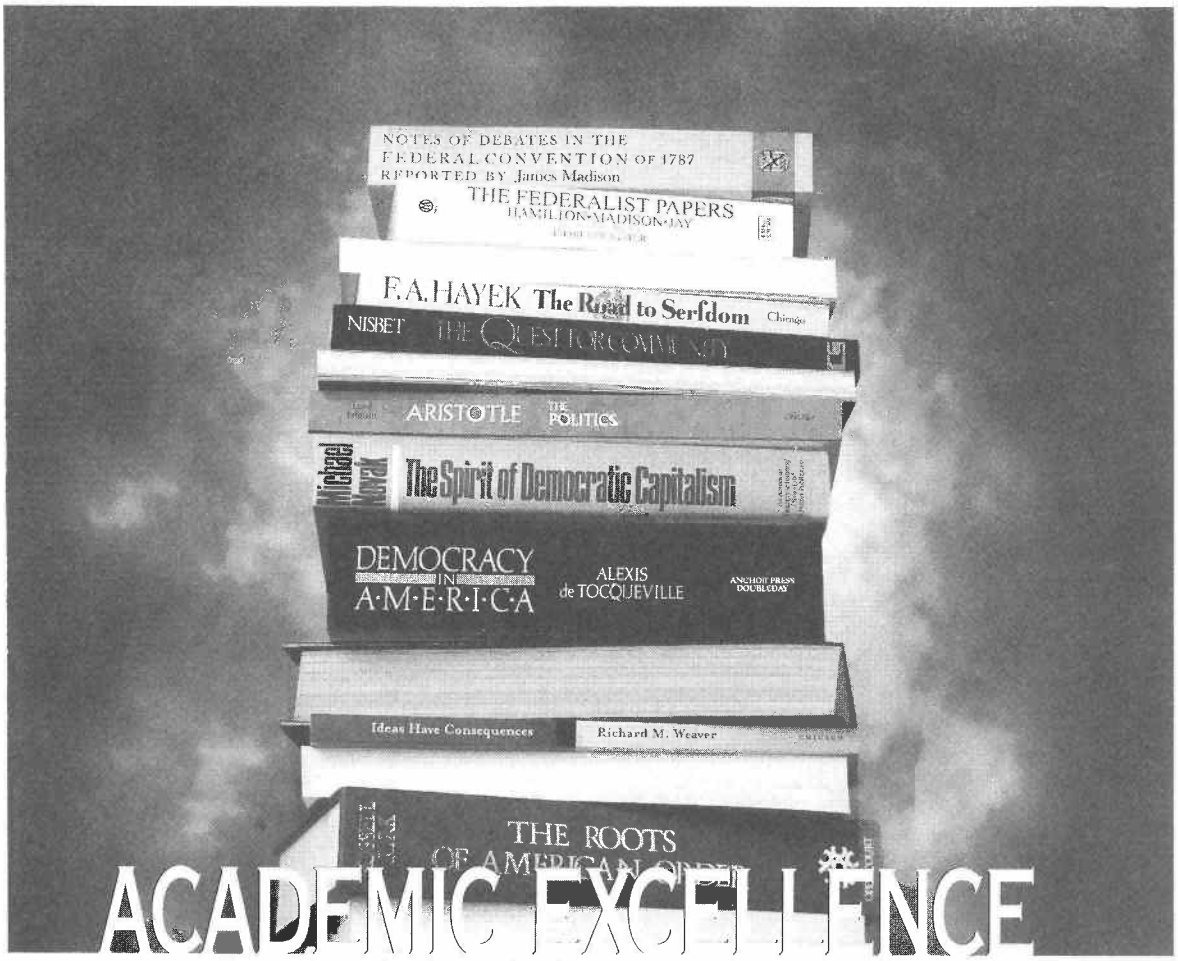

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