

Selling America To The Highest Bidder: Hypocrisy Is Not Democracy! is a novel of political discovery in which a man and a woman, working together and arguing about what they find, fall in love as they expose destructive forces at work in a search for political integrity in America.

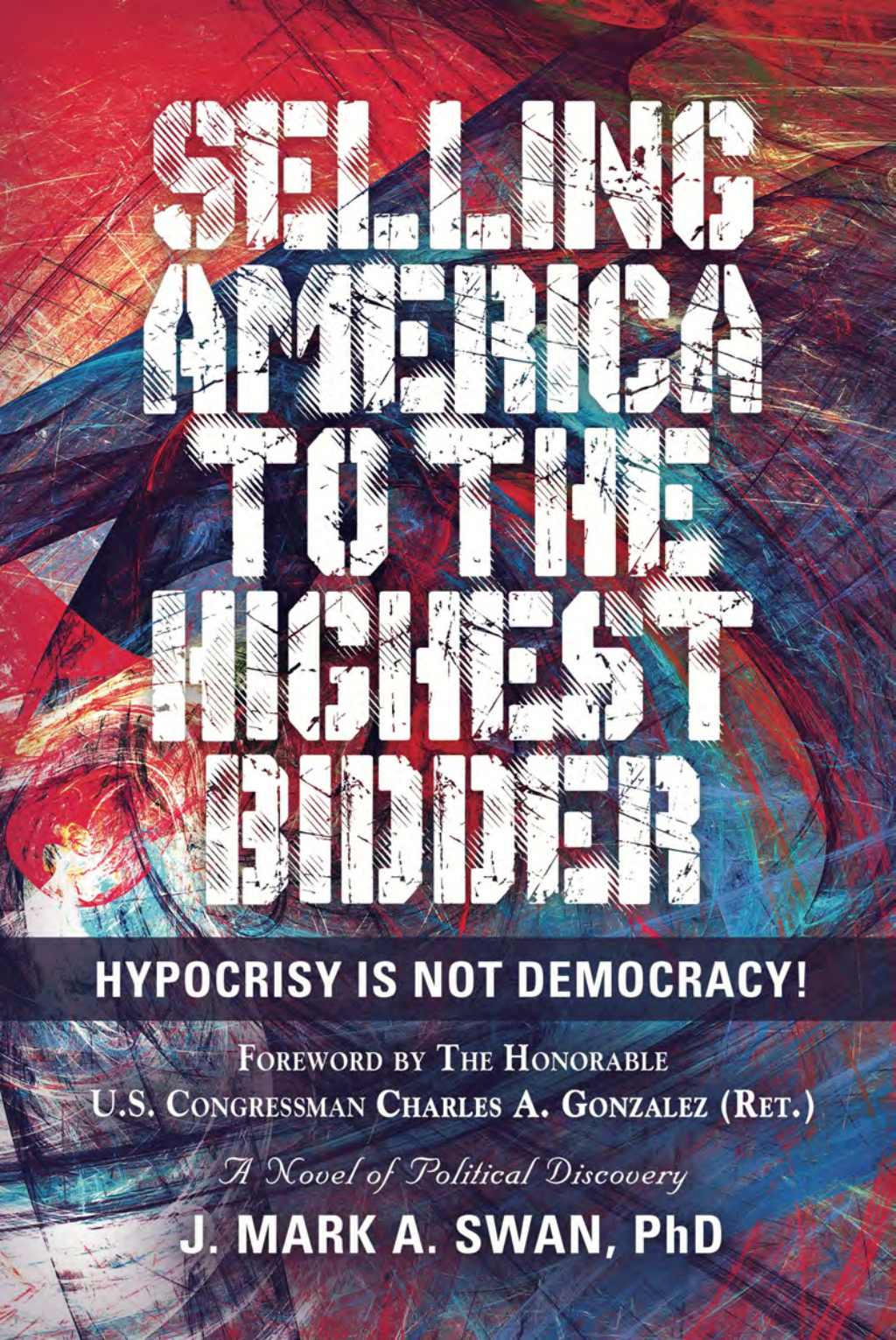
Selling America to the Highest Bidder: Hypocrisy Is Not Democracy!

By J. Mark A. Swan, PhD

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SELLING AMERICA TO THE HIGHEST BIDDER

HYPOCRISY IS NOT DEMOCRACY!

FOREWORD BY THE HONORABLE
U.S. CONGRESSMAN CHARLES A. GONZALEZ (RET.)

A Novel of Political Discovery

J. MARK A. SWAN, PhD

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1

A Citizen Becomes Interested in American Politics

It is a rainy spring day in Washington State. Joshua Logan, historian extraordinaire and lately retired, is sprawled on a cheap plastic chair on the balcony of his apartment overlooking a little lake near the pacific coast. His balcony overhangs the water, yet he is sitting outside without getting wet, because the balcony of the apartment directly above his own shields him from the rain. He watches ducks and Canada Geese swim below dipping for the crumbs he has scattered on the water, and raising their rumps in the air to reach below for drowning morsels. It is a pleasant and peaceful scene, but this morning Joshua Logan is uneasy.

This is an unusual state of mind for old Joshua, for he is blessed with uncompromising self-confidence. Describing himself as a senior citizen, he does not mean he is older than most, but wiser. In appearance, he is not imposing at 74, short and stocky with a mop of white hair flopping about his eyes. Nevertheless, he is an energetic little fellow with a springy step, and possessed of an inexhaustible supply of dramatic tales that purport to be about real places and people. However, because his tales tend to be larger than life, they are often only marginally believable—as indeed Joshua intends them to be. For, if some aspect of life should not be dramatic enough to suit his taste, he will contrive to make it so in the telling. Small matters are never trivial on close inspection because Joshua forbids them to be so.

Before retirement, Joshua Logan was an historian versed in early European and Near Eastern civilizations, who relished the nefarious activities of the leading men and women of their day. In retirement and by choice, he thinks of himself as a raconteur, and indeed he would make an entertaining companion, but for one penchant he makes no effort to contain. He considers it his personal duty to find weaknesses in the arguments of anyone with whom he engages in serious discussion; then to separate these misguided souls from their cherished beliefs whenever he spies a window of opportunity for doing so. The JoshMeister—as his friends caustically refer to him—tells himself that he can, in this manner, nudge others toward intellectual excellence and that is surely his professorial obligation as one wiser than most.

Considering this penchant for reforming others, it is no surprise that Joshua Logan finds himself single in old age and with few enduring friendships. Yet, the old man does have a small cadre of genuine friends, who endure his rants, his taunts and his general irascibility. Those who remain in his orbit have held their own with him; they have breezed by his caustic remarks, and they have dished out their own rebuffs in the exchange. For these few Joshua Logan has developed an enduring loyalty, and he will go out of his way to do for them any service whatever.

But what is the old boy to do about his uneasiness? With seeming clairvoyance, he has sensed that a tragedy is in the offing that will fall, not only upon him, but also upon America and most of its 318.9 million odd inhabitants. That is to say: this tragedy, should it take on shape and substance, will have wide and far reaching consequences.

Joshua manages to narrow his sense of doom to a single thought, that The American Dream—from his perspective already long in the tooth and flagging—is about to be trampled underfoot and buried by methods as yet unforeseen.

He recalls President Ronald Reagan's remark:

America is a shining city upon a hill whose beacon light guides freedom-loving people everywhere.

He recalls this hesitantly because now, in Joshua's imagination, 9/11 has tarnished that shining city, so that it stands vulnerable; its walls and battlements open to assault. By late afternoon, when more than one visit to the brandy bottle has not dispelled the old man's sense of gloom, he decides to review the state of the nation—to reassure himself that all is still well in the citadel.

But where should he begin such a quest?

Fortunately, there's a straightforward answer for the old curmudgeon. As an historian, he has spent his entire adult life confronted by the foibles of unsavory leadership. So, to take stock of the fortunes of his beloved America, he turns to the activities of her leadership.

Since 9/11, certain leaders have made generalities about the direction of the nation. For Joshua, who is more suspicious of human motivations than most, these statements suggest that something unsavory is indeed brewing in the halls of leadership. The first of these statements is an announcement by President George W. Bush's Vice President Dick Cheney, referring no doubt to the Iran-Contra minority report during the presidency of Ronald Reagan. It asserts:

The Chief Executive will on occasion feel duty bound to assert monarchical notions of prerogative that will permit him to exceed the law.

Now, might this be a suggestion, from one in high office, that some kind of dictatorship is foreseen for America, or was the remark nothing more than a politician feeling his oats over a scotch and soda? The old man also remembers that, in reference to the same Iran-Contra report, the Vice President further suggested that the President was empowered:

...to act when Congress was silent, and even, in some cases, where Congress had prohibited an action.

So, Joshua wants to know what provoked the Vice president to these assertions of monarchical privilege in a Republic of The People? He recalls another statement uttered at about the same time, attributed to a presidential advisor. He remembers it word for word because it astonished him so at the time:

You journalists live in what we call the reality-based community. But that's not the way the world really works anymore. We're an empire now, and when we act, we create our own reality . . . we're history's actors . . . and you, all of you, will be left to just study what we do.

Accustomed as he is to social injustices sprinkled lavishly through history, the old man's suspicions are aroused by these remarks. He wonders if, taken together, they might presage some veiled impropriety even now in formative motion.

What might the others think about his speculation? The others are Joshua Logan's remaining friends, a small group of retired professionals and academics mostly, all of whom have come to tolerate the old man's eccentricities, because he has always proved a reliable friend to them.

Scattered about the country, these retired professionals manage to hold periodic get-togethers to discuss matters of moment. They communicate by Skype, email, phone, Facetime, Zoom... or even in the old-fashioned but time-honored fashion of drinks over dinner. Any subject that promotes lively verbal exchange is a matter of moment for this little band, and they call their group 'Seniors Searching for Sanity,' SSFS for short, which is—as one of them pointed out when first they thought to name themselves—an acronym for Sisyphus.

Sisyphus, Joshua remembers, was the mythical King of Corinth punished by the Gods for chronic deceit, and forced for the remainder of his days to push a giant boulder up a hill—a boulder that was forever rolling down on top of him, requiring him to start up the hill all over again. Now, because their debates usually require thoughtful preparation, some toil in fact, it was agreed that their little band was Sisyphean in its search for wisdom—not that any of them were ever in the least deceitful.

So, Joshua Logan decides to pick the brains of his Sisyphean friends one by one, plying them with seemingly innocent questions to discover their thoughts about the state of the nation. He sees himself once more as a professional sleuth setting out to trace malfeasance to its roots in the manure of human greed and perfidy.

There being twenty or so Sisypheans on the planet, the old misanthrope must now decide who to approach first. He emails James and Rose Hafferty, perhaps the closest of his remaining friends, and presents them with the statements that particularly bother him, asking politely for their opinion.

Now, when the Haffertys receive Joshua's email, nothing could be further from their thoughts than political conspiracy. They are busy opening up their summer fishing lodge for tourists in the forest and lake country of Northern Canada.

James Hafferty thinks how nice it must be to have the freedom to invent things to do with your time like Joshua Logan, while he and his wife slave away in their remote paradise, catering to the whims of eccentric millionaires who want at least one memorable wilderness encounter to take home with them; like being chased around a tree by a rutting moose.

So, James Hafferty's response to Joshua's question is cryptic:

...We hope you're not going to use the time on your hands in retirement to invent another American conspiracy, Joshua. May I remind you that, in a 1976 Harris poll, 60 percent of us believed the assassination of Martin Luther King Jr. was the work of conspirators and, more than thirty years later, a 2008 CNN poll

found 55 percent of us still think so. It appears that we Americans have a penchant for conspiracies.

Perhaps more unusual still, around 20 percent of the modern American public is quite sure that UFOs landed near Roswell, New Mexico, in the nineteen-forties, and that the government has been engaged in a systematic cover-up of the event ever since. Now today, a large percentage of modern Americans probably never heard of the Roswell incident, so they've never formed an opinion. I rather suspect that if they had heard of it, the number of believers would triple immediately!

I think it is safe to say that conspiracies will be popular as long as humans walk the planet. So please JoshMeister, spare us this conspiratorial chatter. There are useful things you could be doing, you know. Come up here and we'll put you to work around the place. There are boats to repair, trails to be slashed through the forest—healthy pursuits to circulate the blood of a conspiratorial couch potato...

Upon reading Haff's response Joshua Logan decides that he has been issued a challenge, and there is no stopping the old man when he gets a fly up his nostril. He will find a bonafide conspiracy with which to taunt his skeptical friends, and he thinks he knows where one might be found. He'll call Mary Evans. She's full of naughty ideas worth further investigation.

Mary Evans is a political historian, a founding Sisyphean herself, and a fount of political knowledge:

"Joshy, you called to say hello, how nice!"

"I called for an opinion."

"You didn't call to say hello?"

Mary is used to the bad manners of the old curmudgeon, and she likes to toy with him:

"I live in perpetual hope that someday you *will* call just to say hello—and for no other reason!"

Joshua brushes past the comment for he is intent on finding something naughty he can exploit. Innocently, he asks:

"How free is America when compared with other nations around the world?"

"And you think I know the answer to that one?"

"Well, I'm asking; do you?"

"I'll tell you where you can find an official opinion. Ever heard of *Freedom House*?"

"Is that a halfway house for freshly released felons?"

Mary resists the temptation to enquire how it is Joshua knows about halfway houses for felons:

"No, Joshua, Freedom House is a well-respected institution dedicated to gauging how free people are in nations around the globe."

There is sarcasm in Joshua's response:

"And how on earth does Freedom House think it can manage that?"

"I'm quite sure it's not an easy task, if that's what you mean?"

"But Mary Evans thinks they're onto something, does she?"

“Mary Evans thinks so, yes. Freedom House has been looking at political freedom and human rights all over the world for perhaps 80 years. They revise their conclusions annually and their international reputation depends on using the very best methods of evaluation at their disposal.”

“But every country is completely different—in culture, location, religion, resources—everything! You can’t compare bananas with pomegranates!”

“Oh, these comparisons take careful thought, if that’s what you mean, Joshy.”

Mary is standing up to Joshua and he likes it:

“So, tell me more about what Freedom House does, then.”

“They’re a US-based NGO, founded by a group of Americans who were worried about the advances of fascism during WWII. They wanted some way to see if fascism was catching on around the world, and today, Freedom House has become the world’s leading liberty watchdog.

“When did they start doing this?”

“In 1941! Freedom House began sponsoring rebuttals to Axis shortwave radio propaganda. It did this with the quiet encouragement of President Franklin D. Roosevelt. I believe the president wanted to get popular support for American involvement in World War II, at a time when isolationist sentiments were running strong, because of shuddering memories of the WW I trenches, and pilots forced to bail out of burning planes without parachutes.”

“So, FH continued operations after World war II?”

“After the war, Freedom House supported the Marshall Plan and the establishment of NATO. Then, it took up the struggle against communism.”

“Boy, they weren’t afraid to get their feet wet; what was motivating them?”

“The organization’s leadership believed that democracy was the best weapon against totalitarian ideologies. So, they wanted to encourage it wherever it sprang up, and they helped societies around the world establish independent media, non-governmental think tanks, and elect their leaders.”

Joshua Logan is suspicious of such idealism:

“These Freedom House guys sound too much like God’s Little Sunbeams to be real. My experience is that people are mostly interested in what they can do *to one another*, not what they can do *for one another*!”

“Well, Freedom House people don’t sit on their rumps all day contemplating the sky, with a brandy in one hand and a pipe in the other!”

Joshua Logan knows the joke is on him and he laughs:

“Very well then, tell me what FH has been doing recently.”

“The organization describes itself as a clear voice for democracy and freedom around the world. FH has published its findings against dictatorships in Central America and Chile, apartheid in South Africa, the suppression of the Prague Spring, the Soviet war in Afghanistan, genocide in Bosnia and Rwanda, and the brutal violation of human rights in Burma, the People’s Republic of China, and Iraq. They have championed the rights of democratic activists, religious believers, trade unionists, journalists, and proponents of free markets, everywhere—but everywhere!”

“FH isn’t trying to win a popularity contest, then?”

Mary laughs:

“Neither are you, Joshy!”

Joshua ignores the jab:

“So, what has FH found out about world freedom?”

“Well, for starters, FH says there wasn’t a single liberal democracy with universal suffrage in 1900. Yet, by 2000, 120 of the world’s 192 nations, or 62% were democracies.”

“There were no democracies in 1900?”

“No country measured up to their standard of universal suffrage in 1900! But they counted 25 world nations, or 13%, that supported restricted democratic practices. They also counted 19 constitutional monarchies, or another 14% of the world’s nations that enjoyed some leanings toward freedom from autocratic domination.”

“People were demanding freedom, were they?”

“While you’ve been busy finding fault most of your life, others have been looking for a better life. FH has been making annual and international analyses of freedoms since 1972. They’ve been looking for improvements in the quality of life around the world. They publish an annual report called *Freedom in the World*. Look that up, why don’t you!”

“OK, but what measures do they use to compare different cultures; I want to know how they do it, Mary! How?”

Joshua is becoming argumentative and Mary knows this means the old sorehead is getting hooked on what she is telling him:

“Well FH has a system, Joshy. First off, they examine civil and political rights separately, each on a scale from 1 for most free, to 7 for least free. States where the average ratings for political and civil liberties work out to between 1.0 and 3.0 are rated free. States with values from 3.0 to 5.0 are rated partly free and those with values between 5.0 and 7.0 are not free.”

“Yes, but what questions do they ask to put a country on this freedom scale of theirs? What questions, Mary?”

Mary smiles at Logan’s impatience, and throws him a little more bait:

“Freedom House asks questions like: is the head of government elected through free and fair elections; is there an independent judiciary; are there any trade unions or peasant organizations or the like to protect human rights? They ask if there is effective collective bargaining. Are there free professional or private organizations to provide a safety net for citizens down on their luck?”

“Ahh, now we’re getting somewhere. But does FH have free access to what goes on in a country, or does it have to use spies to find out?”

“That’s a fair question, I suppose? I don’t know the answer; you look it up. But FH reviews and updates its information regularly. I think they work on the basis that it’s better to have something to go on than nothing at all.”

Joshua thinks about all this. Presently he says:

“But this means they’ve decided what freedom is, doesn’t it? Otherwise how do they decide that one nation is free and another isn’t? I mean, what you think freedom is, I probably won’t!”

“Oh, there’s no doubt about that, Josho. You’d think people free if they were tied up with ropes and fed a bowl of cold gruel every day.”

“No Mary! What gives FH the right to decide what freedom is—for all of us, I mean?”

“Joshy, FH uses internationally standards of freedom, of course.”

“What international standards?”

Mary is surprised that Joshua doesn’t know what she’s referring to:

“The *Universal Declaration of Human Rights* enacted by the United Nations General Assembly in 1948, of course, Josho. The Declaration makes basic statements about liberties and rights from which FH formulates the questions it needs to ask.”

“Ahh, that was the declaration that came into being because of Nazi atrocities?”

“Bingo!”

Joshua makes an unusual admission:

“Mary, I don’t know beans about this declaration, but I can agree we need something like it in the world—not that it will improve people’s fortunes much.”

“Joshua, you’re such an old skeptic. This is *the* global statement of rights to which all human beings on the planet ought to be entitled.”

“Is the UN declaration the same today as it was in 1948?”

“You know better than that, my friend. The original consisted of about thirty articles, but they’ve been elaborated and altered in further international proceedings, and FH keeps up with the changes so their findings are in accordance with the declaration as it stands every time their annual report comes due.”

“OK, so tell me, who’s free and who isn’t?”

Mary laughs:

“I wondered if you’d ever get around to a useful question...”

Well, for starters, in 2003, Canada rated a perfect score of one in civil liberties and one in political rights, earning it the designation of free and democratic. In contrast, Nigeria got a five in civil liberties and a four in political rights, earning it the designation of partly free, while North Korea scored seven on both attributes, the lowest possible rating. So, it was dubbed not free.”

Joshua laughs:

“Wow, tough nuggies for North Korea if it cares about world opinion. I’ll bet the not-free nations have nasty things to say about Freedom House—if they care.”

“Actually, you’re right about that! In May 2001, the United Nations Committee on Non-Governmental Organizations heard arguments for and against Freedom House assessments.”

“What happened?”

“Well, Cuba alleged that Freedom House is a U.S. foreign policy instrument linked to the CIA. It submitted what it said was proof of the politically motivated, interventionist activities Freedom House carried out against the Cuban Government.

Cuba also claimed there was a lack of criticism of U.S. human rights violations in the FH annual reports, and that these violations are well documented by other reports, such as those of *Human Rights Watch*.”

“Hmmm, I wonder if some of the Cuban criticisms might be on the money; so, what other countries filed complaints against FH?”

“China and the Sudan added criticisms of their own, I think.”

“What about Putin’s Russia?”

“Freedom House identified Russia as not free.”

“And did Russia respond?”

“Sergei Markov, an MP from the United Russia Party, called Freedom House a Russo-phobic organization, and the Russian government accused the group of serving U.S. interests. But Markov grudgingly acknowledged:

You can listen to everything they say, except when it comes to Russia.”

“That was big of Minister Markov. Did Freedom House answer any of the charges brought against it?”

“The Freedom House representative at the UN argued that they were a human rights organization seeking to represent those who do not have a voice. He said his organization would continue to support NGOs who criticized his own government as well as those of others, wherever there was ample reason, and he stated that the links between Freedom House and the CIA alleged by Cuba were simply not true.”

“But, are the Freedom House ratings generally considered fair by the world community? I mean, wouldn’t nations getting a favorable rating approve while those who get bad marks would disapprove? What’s the general opinion?”

“You’re more persistent than a fox terrier chasing its tail, Joshy. FH reports are widely used in researches by governments, international organizations and by academic researchers. Oh, and they are referred to by news media in many countries.”

Joshua considers briefly if it might be better to be called a fox terrier or a Joshy. He decides they are both equally repugnant and sighs. Then reengages the conversation:

“But perhaps the lower rated nations have legitimate reasons for disagreeing with FH. Perhaps Cuba is right to allege bias?”

“Well, it’s a fair question I guess, but Freedom House doesn’t stand alone in its conclusions. It’s a member of the *International Freedom of Expression Exchange*, a global network of more than 80 non-governmental organizations that monitor free expression violations around the world and defend journalists, writers and others who are persecuted for exercising their right to freedom of expression.”

“But has anyone examined Freedom House methods for bias? I’d like to know if anyone has done that.”

“Yes, someone has, as a matter of fact. Dr. Kenneth A. Bollen, a distinguished Professor of Sociology at the University of North Carolina at Chapel Hill, has conducted several studies of the methodology used in the *Freedom in the World* report and tells us that no criticisms have demonstrated a systematic bias in all the

ratings, although admittedly, most of the evidence is anecdotal and with relatively few cases from which to draw conclusions.”

“OK, but didn’t you say these ratings were subject to annual review, so there’s room for correction? That means a country isn’t saddled with a rating for life; its rating could change for the better if it becomes freer?”

“Or, it could be downgraded if it becomes less free according to FH’s measures of freedom! Don’t forget that! But yes, the records are ongoing and we may hope they will become more and more reliable as more and better tests of freedom are devised and applied.”

“I think Freedom House had better be mighty careful when they make a rating change!”

“You are a funny fellow, Josho. I am sure that all FH reassessments are done with the utmost carelessness and disregard for accuracy...! Of course, all changes have to be very carefully vetted.”

Still not done with fact-finding, Joshua changes the subject:

“How many countries actually get analyzed now?”

“FH tries to be global. As I remember it, in 2011 the annual survey provided freedom reports for 196 countries and territories.”

“Knowing that freedom means different things to different people, I’m still having trouble with pinning numbers on freedom that we can compare place to place.”

“Of course, FH recognizes different kinds of freedom, Joshy.”

“Like what different kinds of freedom?”

“Well, one measure of freedom deals with how news is reported.”

“Without getting technical, how do they do that?”

“But it is technical. The media in each country are given a total score from 0 for the best, to 100 for the worst, based on answers to a set of 23 questions split among three categories: legal, political, and economic. Countries scoring 0 to 30 are regarded as having free media; 31 to 60, partly free media; and 61 to 100, not free media. The ratings and summaries included in each annual report are based on events that took place during the previous year. The evidence is listed for everyone to examine as much as they want.”

“What about the US of A?”

Mary laughs:

“At last Joshua, at last!”

“Get on with it, then.”

“Oh, pardon me, Master! In 2008, Freedom House decided to publish a special report examining whether Americans were sacrificing essential freedoms in their war against terror. It also scrutinized other critical issues like the political process, criminal justice system, racial inequality and immigration. The report is entitled: *Today’s American: How Free?* This report is groundbreaking in the sense that it’s the first book-length report on the freedom of one nation all by itself.”

Now that he’s finally got to America, Joshua is suddenly impatient to know everything:

“So—are we free or not?”

Mary smiles at the old man’s impatience:

“Boy, when you want something, you want it fast! I’m glad we’re not face to face, or you might knock me down!”

“Don’t be foolish Mary Evans! Continue.”

Mary laughs quietly. She has the old man’s attention:

“Freedom House thinks Americans are free to choose who holds political power, and they say that individuals have at least as much influence on the workings of government as citizens in any other democracy. Here’s how they describe it:

The process by which citizens compete for political office, and for influence over public policy, is relatively transparent and accessible to those who choose to take part.”

“So, FH thinks our system works?”

“The way FH tells it: the system provides a substantial measure of democratic accountability and regular rotation in government. As for myself, I s’pos this is still true on the face of it!”

“On the face of what, Mary Evans: what do you mean by that?”

“Do you really and truly want to know what I think?”

“No Mary, I’m asking because I have no interest whatever in your opinion!”

Mary knows from experience, that the more obnoxious Joshua becomes, the more anxious he is for answers: it’s a thirst for knowledge as much as ill temper that motivates the old rogue. She plays along:

“OK, since you ask so nicely! Although the outward attributes of our free society are still in place, perhaps they are being manipulated internally so that they no longer stand for what we wish to believe they stand for.”

“You’re being obtuse, Mary Evans. Are you suggesting that FH conclusions aren’t as good as you like to claim?”

“Oh, I heartily approve of what Freedom House is doing, but I think there may be attributes that Freedom House does not include in its analyses that might change the complexion of its results somewhat.”

“Somewhat, Mary Evans?”

“Although Dr. Bollen found no evidence of bias in the work of Freedom House, some notable persons beg to disagree.”

“What notable persons, Mary?”

The eager interest in Joshua’s voice tells Mary she’s got a fighting fish on her line, and she intends to play him:

“Well, there’s our old friend Avram Noam Chomsky, linguist, philosopher, cognitive scientist, logician, political commentator, activist, and God Knows what else. He’s sometimes described as the father of modern linguistics.”

“I’ll be damned!”

“Another critic is Edward S. Herman, Professor Emeritus of Finance at the Wharton School of Business of the University of Pennsylvania, a media analyst with a specialty in corporate and regulatory issues as well as political economy.”

“So, what do these—err—notables object to in FH analysis?”

“They accuse the organization of excessively criticizing states opposed to US interests, and showing undue sympathy for regimes that support US interests.”

“They think like Cuba?”

“Maybe, but that’s not what troubles me.”

“Then tell me what troubles you! That’s what I really want to know.”

“What troubles me is that if certain types of corruption go unreported, because there is no current way to measure them, then well—Freedom House reports might be more optimistic about the state of nations than they ought to be.”

Joshua roars with laughter:

“So, what types of corruption might go unreported?”

“Sneakiness!”

“Sneakiness? I’ve spent a lifetime trying to measure that. So, you think there might be a sneakiness that Freedom House has no way of measuring?”

“I think so, yes!”

“But that is wonderful, Mary. What makes humans so fascinating is their innate naughtiness, don’t you agree?”

“No Joshy, that is what makes *you* so fascinating!”

Joshua waves the comment aside:

“But, does FH admit they have no way to measure some aspects of freedom?”

“Here’s what Freedom House says about America, you can decide what they mean:

...More than two centuries after the adoption of the Constitution, the American political system is, in many critical aspects ... either still a work in progress or in need of serious repair.”

“You’re not giving me a secure feeling, Mary Evans!”

“Joshua, you don’t want a secure feeling; you’ve never wanted a secure feeling in your entire life. You want trouble and you know it, and I’m indulging you. That’s why you haven’t hung up!”

Mary is right; Joshua is on the edge of his cheap plastic chair:

“Hmmm! In need of serious repair...you say? So, what would you add to what Freedom House says about our freedoms—you, yourself, I mean?”

“I think that the FH statement needs to be more direct!”

“How, more direct?”

“I’d agree that the American political system is either still a work in progress or in need of serious repair, but I’d add, *or is about to fall apart completely!*”

Joshua absorbs this for a moment. Over the phone, he can’t tell if Mary is joking or serious, but he does know that she loves to toy with him:

“My dear Mary, what exactly *can* you mean?”

“My dear Joshua, I think FH analysis may be a trifle on the light side, knowing human naughtiness, as you like to put it. But it’s a worthy effort nonetheless!”

“A trifle on the light side; what does that mean, Mary Evans?”

“Here’s what I really think, Joshua Logan. I don’t think we have a working electoral system by, of and for the people anymore, because it currently runs on the gerrymandering of districts; shortened early voting; vote suppression in key areas;

legally reduced voter turnout; runaway campaign financing; harassment at the poles; voter ID challenges; the intimidation of minorities; voting machine fraud, and God knows what else! I guess Freedom House and I have differing opinions about what it means to be free.”

Mary’s words catch Joshua off-guard. In fact, he is stunned by the enormity and abruptness of Mary’s indictment. Might he indeed be about to find a conspiracy with which to taunt old Haff? Cautiously he asks:

“You mean how democracy ought to hang together is different from the way it is hanging together?”

“How perceptive you are today Joshy!”

Mary is giving Joshua insights he has never thought to consider together in one package, and he doesn’t like being thus caught off-balance. Absently he mutters:

“What have I been missing? What have I been missing?”

This is altogether too much for Mary’s impish sense of fun:

“Well Joshua my friend, I could hazard a few very wicked guesses about that one! But seriously, in your professional capacity you must have often thought in terms of the dynamics of change—like what happens to established governments through time—and why. There’s a track record, a common pattern of decay in long standing governments that Freedom House doesn’t mention in its analysis. Indeed, it’s probably outside their official mandate. But if Freedom House should fail to consider the erosions of time, can they really hope to make reliable projections about the future?”

“I know very well what you’re talking about; I’ve seen these erosions in my own historical adventures.”

“So, you get my point? If Freedom House neglects the importance of process, their conclusions about national freedoms might be off the mark.”

“Yes, I do get your point. We need to know where a government is in its life cycle—kind of like knowing the age of a star tells us what will happen to it next.”

“Not a very good analogy, Joshy; a star’s life is measured in billions of years. Tell me, oh Wizard Historian, what’s the rule-of-thumb lifespan for your average civilization?”

“About 200 + years I suppose, give or take. Why?”

“We’re at more than 250, aren’t we?”

“Give or take!”

“What does that tell you?”

“Well you know the old cliché: pride comes before a fall?”

“Ruminate on that, Joshy.”

“Ruminate for me!”

“No, it’s your baby, now.”

“Next time I call you, I promise I’ll call just to say hello!”

“Ahh, now that’s progress, we’ll see if you live up to it... Very well then, here’s how I see things. Democracy is about equity and fairness. But fairness is an aspiration, an unfulfilled desire, a striving for decency, brought on by the recognition that we’d like to be more cognitively moral and less like beasts of the

field. I'm saying that fairness is *not* inherent in us; it exists as an aspiration in the human soul and perhaps as a fervent prayer in church on Sundays.

"So?"

"So, we've founded our democracy upon a dream of purity, as if by planning for it we might end up living it, and make it part of our real natures."

"But as things stand, some of us want fairness, while others don't want it at all?"

"Precisely, and if ambiguities of purpose like that pull against one another, they can cause cracks in the edifice, and the structure may eventually crumble. I think that's what we've got now; we've got a crumbling edifice that's not quite three hundred years old. I think your antennae have picked that up already, and that's why you're asking me for all this..."

...But good heavens, I've got to run, you've made me late for an appointment with all your darned questions!"

"But I'm not done with this conversation?"

"Well, I am. It's time for you to do some homework, Joshua. Next time we talk, tell me if the changes going on are just the inevitable backfires of a work in progress, as Freedom House would have us believe? Or is there really something going terribly wrong in the halls of government?"

"You're giving me a homework assignment?"

"What's the matter professor, you forgot how it's done?"

The Citizen Suspects Widespread Political Corruption

Joshua Logan isn't quite ready to think of his beloved America as a crumbling edifice, although Mary has suggested it. But the possibility, darkly implied, that there might be corruption abroad in modern American politics has his immediate attention. He sits on his cheap plastic chair surveying his lake, pipe in one hand, brandy glass in the other and considers what the discovery of a political conspiracy might do for his thirsty ego.

It's what Mary said about elections that has his particular attention:

I don't think an election system that runs on gerrymandering; shortened early voting; vote suppression in key areas; legally reduced voter turnout; runaway campaign financing; harassment at the poles; voter ID challenges; the intimidation of minorities; voting machine fraud, and God knows what else, is a working system. I guess Freedom House and I have differing ideas of what it means to be free.

Until Mary made that pronouncement—Joshua thinks of it now as *The Mary Indictment*—he had always thought of dirty tricks as individual cases of runaway ambition to be expected among those competing for power. Now, he decides that this is a naïve conception; for it is more probable that seemingly separate political misdeeds are connected together in a coordinated master plan to take away the right of a people to choose their leaders. Indeed, Joshua is miffed he was not aware that there might be such a master plan before Mary brought it to his attention.

However, aware, at last, that there might indeed be a misanthropic feast spread before him, Joshua becomes mightily pleased with himself. He sees an opportunity to prove that integrity is as absent from the modern human soul, as he has found it to be absent through thousands of years of history. This may be one-in-the-eye for old Haff.

After all, he reasons, in a land swamped with riches, it is surely inevitable that bold and shifty adventurers will attempt to co-opt the whole shooting match for themselves, democracy be damned! The way Joshua sees it, modern usurpers of freedom might at this very moment, be moving secretly to find ways to by-pass the checks and balances that prevent unbridled monopoly, while, at the same time, keeping the well-oiled engines of commerce running without interruption, for their personal profit.

Mary has not suggested conspiracy, but if he's thought of it now, then she has already thought of it, because Joshua judges her to be almost as smart as he! Yet, as

willing as Joshua is to believe the worst of others, he still has insufficient evidence of wrongdoing to justify an all-out deployment of his remaining energies in retirement.

To uncover a real conspiracy against free and fair American elections, Joshua knows he will likely have to investigate the entire electoral process; he'll have to examine every obstacle to freedom Mary has mentioned in her indictment, and others besides...

...Will he not have to uncover a war against democracy being waged locally as well as nationally; won't he have to compare countless foggy political episodes one with another to discover the coordinating thread woven through them all and—of course—will he not have to go back in time to discover where, when, why and how such a plot ever took shape? In other words, he is contemplating such a huge task that, no matter how diligent his pursuit of wrongdoing, he can hardly expect to expose the convoluted meanderings of American politics—all by himself even—in the time remaining to him on this planet.

And, what if he should undertake such a huge mission and even complete it, only to find little or nothing to fuss about? Then, he would have wasted his precious remaining life on earth in the strenuous pursuit of a fantasy! So, Joshua must be able to visualize success before he enters the fray. And where should he look for such confirmation? Well, he must bother Mary Evans again of course... Who else? He calls:

“Hello, Mary, dear?”

“Hello, Joshua dear! What do you want?”

“All I said was hello; just like I said I would!”

“I made note of that. So, how is our shining city on a hill; is it a crumbling edifice?”

“That's why I'm calling; it's too big a question for me to tackle in one gulp.”

“So, you want me to point the way?”

“I've already said hello, once! Isn't that enough?”

Mary chuckles:

“OK, I'll play along. Ever heard of the *Iron Law of Oligarchy*?”

“The political philosophy of Robert Michels?”

“Yes, that's the chap.”

“What can a dead German philosopher have to say about modern America?”

Mary laughs:

“So, because Michels is dead and he wasn't a yank, you think he has nothing to say to us; is that right?”

“I'm a patriot, Mary Evans. Michels was a fascist.”

“Ahh, of course, Joshua is a patriot. Didn't William Pitt The Elder say patriotism is the last refuge of a scoundrel?”

“I'll happily admit to being a scoundrel, if you'll just tell me why Michels deserves my respect.”

“Oh, but he does deserve your respect, Joshy. Yale Political Scientist Juan J. Linz has just written a book about Michels. He says the man should be ranked as a foremost thinker in modern political sociology.”

“Was Linz also a German?”

“You are a self-righteous old bigot, Josho; I don’t know why I like you. In a 1911 book entitled *Political Parties*, Michels kind of predicted what our democracy might look like today, and I think he got it right.”

“Got what right?”

“I mean that Michels’ 1911 Iron Law is operating today—in America. Our very own politicians are validating The Iron Law of Oligarchy as we speak! Michels thought that government by a few rich and powerful individuals—monarchs, dictators, emperors, triumvirates, consortiums, or what-have-you—would be inevitable everywhere in the world, even if nations start out as democracies.”

“You mean that democracies don’t stay democracies unless people fight to keep them that way?”

“Yes, that’s exactly what I mean!”

“So, what else is new; we all know that. Did Michels have any specific ideas about how to defend a democratic republic?”

“I’d say his purpose wasn’t to solve our problems, but to alert us where things were likely to go wrong. According to Michels, the USA ought to be moving towards an oligarchy right now.”

“You mean, Michels is telling us we’re in for a nasty surprise if we haven’t noticed what is going on around us in politics.”

“He’s telling us not to take our heritage for granted?”

“So, what’s so special about Michels’ Iron law? I mean, Thomas Hobbes thought people couldn’t govern themselves way before the American Revolution, you know.”

“I have to spell it out for you, do I? Well OK!

Hobbes based his pronouncement on the behavior of Englishmen after they’d separated King Charles the First from his head and the country was being led, if that’s the right word, by an unruly bunch of barbaric parliamentarians called round-heads. That’s hardly comparable to what Michels was thinking about at the end of the nineteenth.”

“OK, then what does Michels add to the conversation?”

“His message is that if you leave people to their own devices, some among them will always want to centralize power on themselves and they’ll be able to do it, because most of us are so tied up with our own mundane, inconsequential philandering that we don’t pay attention to what those with power over our lives are doing.”

“We’re complacent you mean?”

“Call it what you like; if we’re focused on ourselves, we miss the bigger picture in which our lives will play out.”

“Then, tell me in more detail how Michels thinks greedy government comes about, if it doesn’t start that way?”

“To get things done in a large organization, power has to be delegated. And when leaders delegate power, the recipients will turn that power to their personal benefit, if they get half a chance.”

“So, there are two difficulties with keeping any democracy intact—complacency *and* bureaucracy?”

“Yes, I s’pos that captures it.”

“And Mary Evans, does she see any way around these problems?”

“Some people *have* tried to get around Michel’s Iron Law. The Green Party of Germany tried to break the bureaucratic pattern during the 1970s and 1980s, by appointing no permanent officers. Anyone could remove a party official for reasonable cause and even the smallest, most routine decisions could be put up for a vote.”

“And did it work?”

“Yes and no! When the party was small, The Green Party was able to cut out bureaucracy, but as the party grew it had to raise funds, run elections, run rallies, work with other political parties, so on and so on—coordinate and manage, coordinate and manage! In the end, work had to be delegated and you couldn’t up and fire the guy you appointed if you wanted things to keep running.”

“So, there’s no way to avoid delegation of responsibility in government, and that means that managers—elected or appointed or self-proclaimed or however they get there—end up making choices that drift away from the wishes of those who put them in office?”

“At times you can be quite bright, Joshy. Anyway, that’s how Michels saw democracy creeping toward oligarchy and away from the wishes of the people it was meant to serve.”

“But that’s why we have elections—to prevent greedy people from taking over our system of government?”

Mary chuckles softly:

“Sure Josho, sure! Evidently, you haven’t noticed that elections can be rigged:

Power corrupts and absolute power corrupts absolutely. Great men are almost always bad men.”

“Lord Acton?”

“I’ll bet you agree with him?”

“He was right!”

“OK, so he was right, and I’m saying that oligarchs—rich business leaders with political influence—can’t easily be gotten rid of once they’re in. Power gives these leaders the ability to reward loyalty, so they build fortresses of like-minded individuals about them that are difficult to infiltrate, or destabilize—and may be near impossible to dislodge without violence if they gain a real foothold.”

Suddenly, it dawns on Joshua that Michel’s Law of Oligarchy is a guarantee he *will* find corruption in American government if he goes looking for it. Of course, our leaders have bent rules to fulfill personal ambition. Why didn’t he get that message already?

“So, Michel’s law says I’m going to find corruption if I look for it?”

“I’ve told you so already. In fact, it’s such a damned certainty that I wish you wouldn’t bother finding out. You’re a confounded nuisance, but in spite of that I like you, and I don’t want to see you get hurt.”

“You think I’m crazy?”

Mary laughs long and hard:

“My dear Joshua, there has never been any doubt about that, but usually I find your brand of craziness refreshing. This time I don’t. You’re aiming to chase after an animal that will turn on you, chomp you to bits, and spit you out in little chunks.”

“That’s my affair! Anyway, you’ve spiked my curiosity, so that makes you guilty of setting me up!”

“Oh, you can be sure I’m feeling guilty about that already; I didn’t think you’d be so ridiculously impetuous.”

“Well, I’m not going to commit to anything without some real evidence that our government is actually drifting off its democratic course. Is there any real evidence of that, that you know of?”

“I wish you hadn’t asked, because well...yes, there is evidence that we’re off course.”

As she says it, Mary realizes this is something else she should have kept under her hat, but Joshua is almost begging now. There is a burning enthusiasm in the old man’s voice, quite different from his customary, know-it-all indifference:

“Mary, you must tell me about this, immediately!”

Mary is unable to resist the urgency in the old curmudgeon’s voice:

“Gilens and Page,” she blurts out.

“Gilens and Page?”

“Yes. Dr. Martin Gilens of Princeton and Dr. Benjamin Page of Northwestern U, applied multivariate analysis to a data set that included 1,779 policy issues that came before Congress between 1998 and 2002, They wanted to discover which people—the rich and powerful, or the rest of us—most influence political outcomes today.”

Gone are all Joshua’s carefully crafted mannerisms of speech. His voice is strong and excited, like a young man rejoicing after scaling his first mountain:

“So, what did G and P do to get answers?”

“They compared the opinions of Americans at the 50th percentile income level and at the 90th percentile level with the kinds of legislation introduced in congress.”

“So, they really did want to know how wealth influences policy?”

“Yes.”

“Well...?”

“Their results support theories of *Economic-Elite Domination* or of *Biased Pluralism*, but they do not support theories of *Majoritarian Electoral Democracy* or *Majoritarian Pluralism*.”

“Sorry, my language skills are restricted to pigeon English, Mary Evans!”

“I’ll paraphrase it for you then, you old rogue. Economic elites and organized business interests appear to have substantial and independent impacts on U.S.

government policy, while average citizens and mass-groups, like unions, appear to have little independent impact on policy.”

“So, the rich *are* steering the direction of the country?”

“G’s and P’s results suggest that government, whether dominated by republican or democrat, more often follows the 90th income percentile and business interests than it follows the 50th percentile—that’s most of us—in its legislative agenda.”

“Then, that *is* a shift of power away from the people, isn’t it?”

“I s’pos you might interpret it that way, but G and P are not so forthright. They acknowledge that average Americans still enjoy—emphasis on still enjoy—regular elections, freedom of speech, free association and widespread franchise although the last is perhaps somewhat undermined.”

“But are Gilens and Page implying that rich folks like the Koch Brothers control our legislative agenda?”

“Oh, G and P are very careful not to say anything of the kind. They note that when a minority of moneyed-elites favor a policy change, say one-in-five, the change happens only 18% of the time. On the other hand, when a majority of moneyed-elites favor a change, that change happens 45% of the time.”

“OK, so tell me, what is a moneyed-elite?”

Mary laughs; she can’t shake off the gnarled old terrier:

“There are two flavors to elitism, Josho! There’s *Financial Elitism* in which rich people get to decide and *Intellectual Elitism* where smart people get to decide. Gilens and Page say that, since the 1980s, we’ve allowed the rich people to decide and the rich are not much inclined to favor social equality—my opinion, of course.”

“Do Gilens and Page mention oligarchy in their presentation?”

“Interesting question! I think there’s a tendency in all human societies for a ruling class to emerge that steers the best of everything towards itself.”

“Like Michel’s Law suggests?”

“Yes. The two authors are obviously looking into that...”

“...But they never once use the word oligarchy although they’re alluding to it all the time?”

“I think that’s right, yes.”

Joshua is out to squeeze every last drop of information from Mary:

“OK, so G and P ended their study in 2002. Does what they found still apply today?”

“Joshy dear, do you really expect the influence of money on government to have diminished since 2002? If the rich are calling the shots, as our two researchers seem to suggest, then they will support policies that benefit the rest of us, if, and only if, their personal interests happen to coincide with public opinion.”

“You mean, ordinary folks sometimes get their preferred policy outcomes although they may have little direct effect on policy choices? How often do rich and poor agree on what needs to be done?”

“You can’t really expect me to answer that one. All I can tell you is that policies supported up and down the income ladder have a better chance of enactment than

policies with public support, but no elite support. You'll have to look deeper if you want to know more."

"So, our democracy is put-putting along, sometimes reflecting the wishes of many people, but particularly reflecting the wishes of the wealthy and powerful? Were these results affected by the Supreme Court 2010 *Citizens United* decision that allowed industry and the wealthy to pour money into elections?"

"Oh no, Josho! The Gilens and Page study predates *Citizens United*, but I'm willing to bet that since their study, and because of *Citizens United*, oligarchy has only grown stronger in the United States."

Joshua pauses to summarize what he has found out so far:

"Hmmm... So, Michels predicted that oligarchy is bound to take hold in any democracy; Gilens and Page prove it is happening in ours!"

"Well, I think there's something to that alright, but I'm not sure the word 'oligarchy' gets through to us; I mean, none of my friends know any wealthy tycoons, and you're certainly not one, you and your ducks."

"Never mind that. What you're saying is that I won't be wasting my time if I go looking for trouble in American politics?"

"No, you won't be wasting your time—you'll be wasting what's left of your measly life Joshua, because your interference will not be tolerated. So, I implore you to drop such foolishness immediately!"

"Now, Mary Evans, are you suggesting that something needs to be done, but no one should step up to the plate, because they'll get hurt? I hadn't figured you for a wimp."

"Staying alive isn't wimpy, Joshua."

"But you're saying that no-one should fix what's wrong because they'll get hurt?"

"No Joshy! I'm saying that something does need to be done, yes, but not by you—not by you! I've said it before but you're my friend, God only knows why, you're my friend. So, I'm begging you to leave this matter alone. If you should discover corruption—and you will—you won't be able to keep your fool mouth shut, and that will get you buried alive!"

"Are you suggesting I should avoid risk just because I'm old? I think my age is the very reason I should get into the game. I have neither immediate family, nor professional obligations to hinder my effort. In fact, I'm the least attached of anyone I know. So, I have the time and therefore the opportunity. In fact, am I not the best qualified of anyone you know to go after fraudulent political behavior?"

"Joshy, crusades are for the young who give no thought to consequence because they don't yet know what consequence will do to them for the rest of their lives. Besides, the young have the endurance to survive a round in the ring but you—you've fought your bouts in the ring; you've earned your water birds and your water wings. If you get tangled up in this one, I won't be able to rescue you and that will make me very sad! You wouldn't want to make a dear friend sad, now would you?"

"Then, I think you better explain what I should be scared of."

"You mean, you don't know?"

“You’re the one who’s telling me to lay off!”

“OK, then, consider this, oh crazy one: whistleblowers are the salt of the earth because their blood salts the earth, Joshua... and you are no Erin Brockovich.”

Upset that Mary seems to think he’s not up to a challenge; Joshua pours out a flood of reasons why whistleblowers are the lifeblood of any democracy:

“Mary, look at what whistleblowers have done to maintain integrity! Daniel Ellsberg leaked portions of the Pentagon Papers to prove that the Johnson Administration lied to the public and to Congress about the Vietnam War! Whistleblowers exposed the Watergate burglary that led to 69 indictments and the resignation of President Richard Nixon. Whistleblowers exposed the illegal nationwide domestic spying program by the George W. Bush administration after 9/11! They revealed the military’s failure to replace Humvees in Iraq and Afghanistan with better bomb-deflecting vehicles, to avoid hundreds more dead or maimed servicemen and servicewomen.”

“You misunderstand! I’m asking you to pay attention to the *dangers* of whistleblowing *not the need* for it! Imagine this situation. You accuse a politician of crimes against the nation and he or she takes you to court, what charges might you expect the offender to bring against you?”

“How should I know! I haven’t done anything!”

“Then, think on this before you jump in with the gators, Joshua.

If you should obstruct an individual whose official duty is to represent the people, you may be accused of acting against the interests of the nation, and of spreading false information with the intention of confusing, dividing or troubling the people. If you are so accused, whatever the specific charge, you may expect the sky to fall on you with a clang far greater than the stop sign that fell on the head of Chicken Little!”

“But this is the United States of America. If I were so accused, I would be able to present evidence in my defense in a court of law.”

“Perhaps—if your evidence should be admissible in a court of law.”

“Why wouldn’t my evidence be admissible?”

“The Justice Department can retroactively classify material as inadmissible at any time, and without advising you or providing you an explanation if it does so.”

“But has the Justice Department ever reclassified evidence to make it unavailable to a plaintiff in a court case?”

“Of course, it has! Why d’you think I mention it? There’s a recent book: *Classified Woman*, by Sibel Edmonds, a former FBI translator. She was about to make a deposition in a Federal Case, when the documents she intended to use were abruptly classified.

The point is that if the Senate or House Judiciary Committee Chairmen make a criminal referral against you to the Department of Justice, on the recommendation of a member of congress, the department might decide to bring charges against you for disrupting the legitimate work of a government elected to represent the people. So, I’m warning you that you may find it impossible to defend yourself, even if the charges brought against you are entirely spurious.”

“Mary, we live in America; not in a land of bloodthirsty despots!”

Mary laughs:

“Joshua, you’re an old ruffian, and I have no idea what far-fetched stuff you might get into. So, I’m just giving you some issues to ponder before you commit to an assault on our government. Bear in mind that of the 535 members of the 115th Congress, no less than 226 were lawyers. One hundred sixty-nine Members, or 38% of the House, and 57 Senators or 57% of the Senate, held law degrees at last count. So, our representatives in both houses will know how to tie you up in legal knots, cook your goose, and eat you roasted, if you dare to interfere with what they have in mind.

Remember also Joshy, that people in power play rough. The organization *Citizens for Responsibility and Ethics* in Washington released a comprehensive list of members of Congress under investigation in 2018. At the time, there were 16 members—12 House members, and four Senators—under investigation for offenses against their office. So, it’s a fair bet that people in high office will go after you if you interfere with their plans. I’m strongly advising you not to venture into what will become a legal hornet’s nest for you.”

“If I told a true story, people would come to my side?”

Mary has to laugh:

“You, the arch cynic of all time, are telling me that people are going to flock to your defense if you do something silly? Joshua, if there should be an investigation of your personal ethics, because you’ve sought to expose impropriety in government, it’s likely you’ll be added to an enemy of the state list. If that should happen, the door opens for the promulgation of false stories about you that you will be unable to refute, especially if the information in your case gets reclassified as secret. So, if you attempt to meddle in government affairs, normal life ends for you—but forever.”

A passage from Alice in Wonderland swims lazily into Joshua’s mind:

A secret is a secret, but why it’s a secret or who says it’s secret is a secret, and we can’t tell you because that’s secret. He says:

“What you say sounds quite improbable, Mary.”

“Dream on then, but if you are added to an enemy of the state list, you will be branded like a wandering bull with a ‘Double D’ on your flank. You will be under permanent surveillance, and frequently detained because of unspecified suspicions! Persecution will follow you wherever you go and whatever you do, probably for the rest of your life.”

“It’s kind of you to exaggerate the risks, Mary!”

“Oh, I’m not exaggerating the risks! Didn’t George Orwell say: *The further a society drifts from truth the more it will hate those who speak it?*”

“I don’t scare that easy!”

“OK, if the arm of the law doesn’t scare you, what about being beaten up?”

“Physical assault, you mean?”

“Yes, physical assault! Do you remember that President George W. Bush ordered the FBI to find whoever had disclosed information about his warrantless

National Security Agency (NSA) electronic surveillance program and its write-up in the New York Times?”

“Yes, I remember that.”

“Did you hear what happened to the four men and their families who issued that follow-up request to the New York Times?”

“No.”

“Well, all the four ever did, mind, was ask the newspaper to keep tabs on what was going on. They *did not* contribute any information about the disclosure themselves. Yet, although they disclosed nothing, armed FBI agents raided their homes. Two of those who issued the follow-up request reported that the FBI held guns to their heads, and to the heads of their wives.”

“So, what crime were they charged with?”

“They were never charged with a crime.”

“The attacks were intended to intimidate, then?”

“What’s important is what you think, not what I think! I’m not planning some mad suicidal escapade, but you might be. I’m just cautioning you not to go down that road, or the Justice Department will discover your particular vulnerabilities and pound you in the solar plexus with them for the remainder of your utterly miserable life.

Think about this for a moment. Publicly offend those in power and you will find yourself ostracized from the illustrious community of which you have so long been a part—without, I think, being conscious that you are so privileged. You’ve just taken it for granted that’s your due. Well, that privilege will be gone. Now you’ll walk under a storm cloud, you’ll be prosecuted falsely, and face mounting legal bills. Your hard-won professional reputation will be in tatters.

Now, you’re proud to be a maverick, but bite the hand of government and you’ll go from maverick to outcast overnight. You’ll be subject to crank calls and rendered helpless to defend yourself against them because, as an enemy of the state, you have become a target for all those angry beings who want to hurt someone for something, it doesn’t matter what or who.”

Joshua remains unmoved by Mary’s pleas, and she begins to recognize that there is something distinctly unnatural about the old lunatic’s desire to enter a world where he doesn’t belong, and without any regard for his personal safety.

She guesses that some unshakable psychological trauma has Joshua by the throat, but she has no idea what it might be. All she can see is that her ancient and quarrelsome friend is perilously close to jumping off a high cliff into a shallow pond paved with razor-edge rocks. She is sure it isn’t ignorance of danger that is tempting him forward. Joshua is proposing to take on a prodigious amount of work likely, in her opinion, to bring him grief, not reward. What surprises her most is that the mention of danger only seems to whet the old rascal’s appetite for risk, a reaction she considers entirely abnormal—perhaps even bordering on psychosis...

...Well, Mary’s apprehensions are close to the bone. Joshua’s foolhardy political audacity is motivated by a youthful trauma that put a stamp on the direction of his adult life, and haunts him yet in old age. The cause of this lifelong trauma was

Lynette Ambrosia Di Albinoni. Her very name spoke elegance to the young Joshua who, upon first acquaintance, fell willingly and hopelessly under her spell.

To complement her name, Lynette was gorgeous. She was gracious and graceful, sophisticated and vivacious, intelligent and full of life; a graduate student in the humanities at a neighboring school. They had met at the wedding of a mutual friend, and after only their second date, Joshua impetuously decided to win her for his life's companion, a remarkably audacious move for one who had never, until that moment, ever contemplated a permanent relationship with any woman.

This matrimonial commitment immediately presented a thicket of new and unfamiliar experiences for young Joshua. Possessed of a crusty and sarcastic exoskeleton, he was under no illusions about the difficulty of his new undertaking. He was going to have to compensate for his lack of natural grace by unflinching attention to Lynette's wellbeing—a dedication he hoped she would come to trust and rely upon.

Now, of course, Lynette noticed the unflagging attention paid her by this reticent, sarcastic little man, but her response was not what Joshua would have wished. Instead of appreciating his attention, Lynette chose to toy with the young man's affections, as a diversion from her arduous scholastic commitments. Feigning interest in Joshua with the purpose of increasing his fixation on her, she set about discovering his social insecurities, so that she might place him in situations where he would find himself out of depth and uncomfortable.

Now the fates obligingly showered Lynette with opportunities to administer little torments on her besotted new companion, and she quickly found her new pastime vastly more rewarding than her initial expectations of it. So great became her pleasure in embarrassing young Joshua, that an astute observer might reasonably conclude that Lynette's behavior was sociopathically motivated!

But Joshua was entirely oblivious to what Lynette was about. He took the little embarrassments endured in her company to be medicinal spoonfuls of pain he must swallow as the price of being in love with a high-spirited and beautiful woman. Indeed, the strange events with which she made him grapple quickly became part of Lynette's allure. Far from understanding what was happening to him, Joshua convinced himself that beneath Lynette's beautiful and charming exterior there must be depths of perception that were causing her to experiment with life in his company. He was flattered that she was sharing this with him. Obviously, he might learn much if he persevered in his efforts to understand her better.

Of course, the fact that Lynette regarded Joshua as light entertainment, made it inevitable that she would eventually tire of toying with him. But Joshua, blissfully under her spell, remained unaware of what Lynette was about, allowing the months they were together to pass as in a dream, his determination to win her growing stronger every passing day and with every strange encounter she thrust upon him.

So, on the fateful day that Lynette chose to dismiss Joshua, the poor fellow was totally unaware that there was to be an ending, and he completely fell apart.

Lynette decided that she would orchestrate a perfectly exquisite finale to her dalliance with the little man. Having decided how she would stage it; she played her

curtain role with the contemptuous aplomb of a veteran actress. On a crowded campus walkway, she stood before a confused, and distraught Joshua pleading to know what he had done wrong. For dramatic effect, she smacked him loudly across the cheek, turned smartly and minced away, calling over her shoulder as she did so:

“Do not call me! Do you hear, Mister Man? Do not call me!”

Crestfallen and utterly confused, Joshua stood desolate and alone while students brushed past him, some of them laughing:

“Did you hear, Mr. Man? You’ve got one Hell-uv-a red face there, bud!”

Joshua did not rebound from this beating. He lost all sense of purpose, abandoned his promising professional career, walked out on his Academic Fellowship, purchased a plot of land in a patch of woodland and built on it a log cabin in which he intended to dwell in solitude for the rest of his life.

However, growing strong from the hardship and physical exertion of his Davy Crockett existence, Joshua finally saw that what he had accomplished with his labor was both solid and real. It happened that such an affirmation of tenable reality was what Joshua’s battered soul required for its recovery, although he did not realize that his subconscious person had been working towards that recovery all that cabin-building summer. The solidity of what he accomplished with his own labor enabled him, at last, to consider a resumption of social life. The difficult question was this: would his chosen profession take back one who had walked out on it without reason? After all, what was to prevent him from doing so again?

Joshua’s timing was fortunate. A former professor was willing to act as mentor, but he set the strictest conditions for Joshua’s reinsertion into academic life. It was an understanding from which this mentor intended to benefit, for Joshua, while obviously not possessing the slightest practical knowledge of human foibles at the time, was not without imagination and creative intelligence in his chosen field. In return for readmission to academia therefore, Joshua was to provide teaching assistance, and co-authorships for his mentor upon the completion of his unpublished work. In addition, he was to fulfill any other duties his mentor saw fit to bestow upon him. Joshua accepted all conditions of readmission without complaint, for his re-entry into academia was now an all-or-nothing re-establishment of life and future.

Although he did at last achieve professional reinstatement, Joshua never recovered from the torments inflicted upon him by Lynette. And, once he had figured out the game she had been playing with his vulnerability, he became subject to fits of blinding and helpless rage that came upon him, triggered by circumstance and without warning, for years thereafter.

But Lynette’s impact on Joshua went deeper than helpless rage: it had another formative impact on his life. After her, Joshua reached the absolute conviction that decadence was incipient if not visibly rampant in every human soul, and he determined thenceforward to examine all events in life for the mischief that he now knew lurked beneath any and all surface veneers of decency, ancient and modern alike. He gradually morphed into a confirmed and irascible misanthrope.

Paradoxically, Joshua's transformation of character contributed to his success as an historian. His cynical convictions gave a drive and purpose to his historical researches that he had not possessed before. It was a behavior not shared by other less deviant and better-balanced academics. He found, to his gratification, that he knew how to describe the perceived indiscretions of others with a verve and vitality that made his historical portrayals of those he chose to ruin, crustily entertaining to students, and to readers of his work.

For Joshua, the fact that those he chose to attack were long deceased meant that he could visit his own suffering upon them in the guise of academic disclosures without fear of retribution except, of course, that some of his fellow academicians regarded him disapprovingly, as one who was cheapening their profession in the public eye. But that did not much trouble Joshua, for he also discovered how to capitalize on these reservations concerning his sincerity. His irascible reputation attracted students to his classes, where they discovered him to be roguishly and cynically entertaining. He gained popularity because of his practiced contempt and lofty indifference toward the norms of convivial behavior.

The fact that his historical book *Caricatures of Character* sold well gratified the old man, but it also amused his misanthropic soul. The average mortal, he thought, enjoyed reading about the uncivilized philandering of people dead and gone, because they could believe that their own unbecoming behavior was what history expected of them. Even the fact that history was punctuated, now and then, with sprinklings of sainthood, served only to highlight the overall perfidy of human nature—a perfidy that Joshua saw every day before him after his encounter with Lynette...

...Now, it seems, Mary is handing Joshua a rare opportunity to visit his misanthropic genius on the modern stage, and he is ready to tackle her proposition that America is a crumbling edifice. Unrestrained by even the minutest sense of fair play, and with every intention of wallowing deep in the muck of social discord, Joshua hastens to set up the final and most rabid investigation of his miserable life. He will make one last swoop into the depths of human depravity before his own departure from the bread-crust of life.

Perceived Threats to Our People's Republic:

1- The Supreme Court says Industries are People

Mary's efforts to dissuade Joshua from an investigation of American politics have fallen on deaf ears. Joshua knows there may be danger in it but, far from suggesting caution, the thought of danger stimulates him to engage in the thrill of one last monumental sleuthing adventure while still planted on earth.

The old man decides he must find out for himself if Michels' Iron Law of Oligarchy has, in fact, been supplanting American democracy over the years since independence, as Gilens and Page seem to suggest. And, if there has been a drift of government favoring the rich, he wants to know when it first appeared?

The old man decides to ask Mary Evans to join him in his political adventures, on the basis that two heads are better than one, and she already knows a lot more about the subject than he. He calls, but he doesn't come straight to the point:

"Mary, I need some American history."

Mary has come to expect sarcasm from the old man and she has learned to preempt his assaults with little aggressions of her own:

"Logan, the history professor, wants a history lesson?"

"Is it a sin to admit I don't know everything?"

"It's not a sin, if the admission is accompanied by a friendly greeting."

"Did I forget to say hello?"

"You did!"

"Hello, Mary."

"Hello, Joshy."

Believing the formalities of greeting to be over, Joshua launches into the reason for his call—but bluntly! It's his way:

"Mary, the truth is I need an accomplice in crime; I'm asking you to join me on a voyage of political discovery? You know what I want to do. How about it?"

"I thought I made it clear that suicide isn't my idea of adventure."

"Is that a no?"

Mary laughs a little. How obtuse can the old boy be?

"Well, a no is not a yes!"

Joshua is momentarily crestfallen:

"Oh dear, that's too bad. It's really too bad..."

He recovers:

"...Then, will you at least answer me a few questions to help me get started?"

“As long as what I tell you can’t be traced back to me! What do you want to know this time?”

“If Gilens and Page found a drift in government that favors the rich, when did it get started?”

“Oh, I don’t think there was a drift, Joshy.”

“I don’t understand. You mean nothing was really happening, then?”

“No, Joshy. I mean that there were years of business as usual punctuated by sudden and explosive bursts of mercantile frenzy.”

“Ahh, mercantile frenzy, was it? So, there were special moments, then?”

“Your idea of a special moment will be vastly different from mine.”

“Tell me about the first moment of mercantile frenzy that comes to your mind.”

“Perhaps we should start at the very beginning. I s’pos you know that our founders had a profound and abiding distrust of corporate power?”

“Because of the British East India Company?”

“In particular, yes. This distrust meant that, after independence, they were not going to allow home-grown corporate giants to spring up and stifle the freedoms of average Americans. They meant to try very hard to prevent that!”

“But what could they do to limit private enterprise?”

“They could regulate it.”

“Like what did they regulate?”

“Well, all American businesses were made to operate under state authorized charters that laid out their purposes, beyond which they were not permitted to venture.”

“But Mary, we are a land of industrial enterprise.”

“We weren’t that way when we began, Joshua. Here’s your first evidence that big changes have happened since the revolution. When we became a nation, every new enterprise was subject to regular state inspections to ensure that it was practicing what its charter allowed—and nothing more.”

“How strict was this control?”

“Oh, it was very strict!”

Joshua is getting argumentative:

“But how was it strict, Mary? How?”

“Businesses were forbidden from merging to form larger corporations; they were not allowed to amass fortunes that might give them undue control over resources intended for the benefit everyone; they were not allowed to own stock in other corporations; they were forbidden from attempting to influence elections, public policy, and other realms of civil society. They operated under penalty of dissolution and possible charges of misdemeanor that might be brought against their chief executives if they abused their assigned obligations.”

“I don’t believe it!”

“Newly independent America was not under the guiding thumb of King Joshua.”

“But were businesses really shut down if they tried to expand operations on their own initiative?”

“They were shut down if they violated their charter in any particular whatever, Yes!”

“So, a charter was like a driver’s license; you couldn’t operate without one, and if you broke the rules you lost your right to drive?”

“That’s right. You kept your license just so long as you did what the state said you could do at the time it authorized you to set up shop.”

“But why haven’t I heard about this?”

“You’re the historian; you tell me. But perhaps it’s because all these early happenings after independence never made the history books you’ve been reading.”

“But charters like that weren’t usual outside of the US?”

“Different strokes for different folks, Joshua. In Europe, charters protected directors and stockholders from liability for harm caused by their corporations, but American legislators continued to reject corporate shields of any kind for a very long time.”

“So, there really has been a huge mercantile change between independence and now?”

“It took generations before we forgot about British commercial tyranny.”

“But people wanted more prosperous lives. They must have thought industry could provide it for them?”

“Yes, you have a point. I think that state regulation of commerce was, perhaps, undermined as much by the wishes of the citizenry as by corporate desires for freedom. Everyone wanted prosperity after the war. It stands to reason that not everyone wanted to be a farmer, or a cobbler—or whatever they did—for the rest of their lives.”

“So, how long did it take before corporations broke free of these regulations?”

“Even after the civil war, legislators still managed to keep some corporate charters operating. Our founders knew that if they gave industrial enterprise a free hand, it’d want way more than the right to ply a trade. It’d want to be heard by government just like the British Parliament had listened to the wishes of The British East India Company. They didn’t want that kind of thing for our new country because they knew, from bitter experience, that ordinary folks would suffer.”

“Perhaps that’s what Benjamin Franklin meant when he said: *You have a republic if you can keep it?*”

“Why don’t you ask him?”

Joshua ignores Mary’s little sarcasm:

“So, there was a huge corporate bust-out on the way? What actually happened, do you know!”

“Oh yes, I know! You see, lawyers began eyeing the U.S. Constitution to see how they might reinterpret it to suit corporate ambition.”

“Ahh, so that’s where it began. What part of the constitution did the lawyers start to play with?”

“The Fourteenth Amendment.”

“I thought the fourteenth was about human bondage?”

“Officially it was, but it became the vehicle that lifted American businesses out of bondage as well!”

“How did it happen, then?”

“Well, the 14th Amendment was ratified in 1868. It granted citizenship to all persons born or naturalized in the United States, including former slaves. It guaranteed all *persons* equal protection under the laws of the land.”

“But I still don’t understand. If the Fourteenth was about the rights of people, what use was it to industry?”

Mary frowns unhappily:

“Joshua, the Fourteenth Amendment has become one of the most litigated pieces of the Constitution. It has been used to argue *Roe v. Wade* on Texas abortion laws, *Bush v. Gore* regarding who won the 2000 presidential election, and *Obergefell v. Hodges* regarding same-sex marriage.”

“But you haven’t told me how these uses of the fourteenth came about, Mary?”

“There was a problem with the wording of the fourteenth that lawyers were able to exploit, Joshua.

You see, no one had bothered to define personhood—because the meaning of the word person was so obvious, I s’pos. I mean, persons were human; what else could they be?”

“You mean, the fourteenth ought to have defined persons as *natural persons*, to indicate human biological origins—or something like that?”

“That’s right, but the word had been used so many times in its proper context, no one thought it necessary to be that precise. Like the fourteenth amendment contains a Citizenship Clause that overruled the Supreme Court’s decision in the 1857 *Dred Scott v. Sandford*, which forbade citizenship to Americans descended from African slaves. Its Equal Protection Clause required each state to provide equal protection under the law to all people within its jurisdiction. Much later, this clause was also the basis for *Brown v. Board of Education* in 1954. That was the Supreme Court decision that precipitated the dismantling of racial segregation.”

“So, there seemed to be no need to spend time on a definition of terms because the meaning of person was so obviously obvious?”

“Yes, but you see, this lack of definition gave lawyers an opportunity to define person to suit the tastes of their industrial bosses.”

Joshua thinks on this a moment:

“So, there has to be a specific court trial that allowed corporations to become persons, and it had to be a Supreme Court trial because that’s the court with responsibility for interpreting our Constitution?”

“Joshy, I’m quite blinded by your flashes of inspiration sometimes. Indeed, there was one landmark Supreme Court trial that reframed the legal meaning of person forever.”

“Never mind my flashes of inspiration, tell me about this trial immediately—like immediately right now!”

Mary smiles at Joshua’s so earnest insistence, then obliges:

“Pay close attention, Joshy, because there’s a lot going on here.

This one trial is an event of enormous consequence in American history, because it has affected American life in large ways far removed from the intentions of our founders. Since this trial, the courts have used the ruling to strike down hundreds of local, state and federal laws enacted to protect people from corporate infringement of their rights. I am quite sure you'll be delighted by the fraudulence in it!"

"But, how can one trial be that important for a nation?"

"One trial can be that important because legal rulings often depend on precedents established in earlier trials. Didn't you know that?"

"I know that a successful argument before the Supreme Court might become a signature case upon which other cases with similar legal framework can be argued to a win. Yes, I know that!"

"That's the thing! I'm no lawyer, but it's my understanding that a precedent becomes a sort of racehorse that lawyers can ride triumphantly across the finish line, in case after case."

"So, lawyers look for cases with a winning record that match the subject they have to litigate?"

"I think so!"

"But isn't that a risky strategy?"

"Life is risky, Josho; I've been trying to tell you that!"

"I mean if a judge were to rule against an argument that led to favorable rulings in other cases, might those rulings be called into question also?"

"Maybe."

"I mean, isn't the use of precedents rather like building a mountain from a molehill?"

"Maybe."

"Maybe! Maybe! Just tell me how the 14th Amendment got to make corporate personhood a reality?"

"I'll outline what I remember of the case. You must read the details for yourself. Your reading assignment is: *Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights*, by Thom Hartmann. It's a fascinating story."

"OK, I'll read it, but just tell me about it now, Mary."

"I love it when you ask so nicely. Joshy! It goes something like this..."

...In 1886, lawyers for the Southern Pacific Railroad argued before the Supreme Court in *Santa Clara County v. Southern Pacific Railroad* that if freed slaves were entitled to protection under the law, then businesses that provided livelihoods for them, and every organization in the country that provided them livelihoods for that matter, ought to be entitled to similar privileges. Businesses, they argued, were, after all, just organizations of people and should not be deprived of constitutional rights just because they acted collectively."

"So, a revision of the word person to include other kinds of *persons* got written into the law because of this case?"

"That's what ended up happening, yes. But how it happened is very devious."

Joshua's ears perk up:

“Devious? I like the sound of that!”

“Of course, you like the idea, but you’ve got to put yourself in the frame of mind of the times to understand what was about to happen. This case was being heard in 1886, more than one hundred years after independence?”

“You mean the drive for a corporate bust-out had been building, I s’pos?”

“That’s exactly what I mean.”

“So, didn’t businesses try to achieve personhood through the courts before 1886?”

“Oh, they did Josho, they did.”

“But they were unsuccessful until 1886?”

“That’s right.”

“So, what made the Supreme Court favor corporate personhood in Santa Clara if it hadn’t favored it before?”

“Ahh, but you see the court didn’t favor corporate personhood in Santa Clara any more than it did before!”

“I thought you said corporate personhood became the law after Santa Clara?”

“It did—but it became the law through sleight-of-hand! That’s why I call it devious.”

Joshua hits his forehead with his hand. Mary can be so irritating sometimes:

“So, what gives, Mary Evans. Spill the beans, at once.”

“You see, Joshua, the case was a pressure cooker of personalities and impulses all demanding a particular outcome that the constitution did not, and could not support.”

“I won’t see until you explain it, will I? So, get on with it!”

Joshua recognizes there’s a need to back off a bit to keep Mary on his side:

“Sorry, Mary. Please give me some background, so I can get the picture.”

Mary looks at her telephone disapprovingly:

“OK, just this time, Joshua...”

The first notable thing about this case is the appointment of the Chief Justice who presided over it. He’d never been a judge in his life, yet President Ulysses S. Grant nominated him for the highest judicial office in the land.”

“He’d never been a judge, and the Senate confirmed him Chief Justice; but why?”

“Politics Joshy! Because of scandals surrounding the presidency, Grant was having real trouble selecting a replacement for Supreme Court Chief Justice John P. Chase who died in 1874.

You see, over 40 Grant family members had benefitted from a variety of appointments since Grant entered the presidency. But, in particular, Grant’s administration was embroiled in a railroad bribery scandal at the time he was trying to nominate the new Chief Justice.”

“So, the senate was refusing to confirm his nominees?”

“Yes. Grant’s first two choices for Chief Justice withdrew their names because they knew they’d never pass senate scrutiny, and his third choice was so obviously

political that the senate was certain to reject it. Three others similarly failed to pass muster. So, on his seventh try, Grant nominated Attorney Morrison Remick Waite.”

“Out of desperation?”

“I should think so!”

“But it worked?”

“Yes, it worked.”

“But, why did the senate confirm Waite after rejecting much more qualified justices?”

“Your guess is as good as mine, but I should think that after the sixth rejection, senators were getting tired of turning down nominees, and they needed to move forward on their own legislative docket. Besides, the country needed a Chief Justice and the senate was holding that up. That looked bad on the senatorial record.”

“So, the senate was under pressure to appoint?”

“Yes, and it knew nothing bad about Waite, because probably no one knew who he was, so they had no red flags to wave at him.”

“So, the senators approved a neophyte Chief Justice. Now tell me about this Santa Clara trial over which he presided?”

“It was a simple tax case having nothing whatever to do with human rights or corporate personhood. The railroad was being sued for back taxes by Santa Clara County, California, because it was refusing to pay taxes of about \$30,000 on property with a \$30 million mortgage. Mr. Hartmann says that was kind of like purchasing a \$10,000 car and refusing to pay a \$10 tax on it.”

“And why did the railroad refuse to pay?”

“When the state assessed the value of the railroad property, it accidentally included the value of the fences along the right-of-way, but the county, not the state, was supposed to assess fences. The railroad didn’t dispute the taxes but they withheld all payment because the wrong assessor had appraised the fences.”

“So, the railroad was being finicky. Was there a reason for that?”

“Oh, I think there was a very good reason for it, yes. I think the railroad was looking for an opportunity to argue a case for railroad personhood before the Supreme Court. I say that because the attorneys for the railroad used much of their argument time to press the issue that the railroad was a person and should be entitled to human rights under the Fourteenth Amendment.”

“So, the railroad’s refusal to pay could have been a legal strategy to bring the ‘personhood for industry’ issue before the court?”

“That’s my guess but, of course, I don’t know if I’m right.”

“I see! Do you think—do you think even, that the railroad hoped the Chief Justice might let them get away with arguing personhood in a tax case, because he was inexperienced?”

“They might have anticipated that, but the new Chief Justice took his new court responsibilities very seriously. The case was a simple matter of tax evasion and had nothing whatever to do with constitutional law or corporate personhood. Chief Justice Waite himself pointed that out in his summation.”

“Then, if the Chief Justice ruled corporate personhood out of the picture, how did Santa Clara establish a precedent for it?”

“I know... I know! This is where things get sticky.”

“Sticky, Mary Evans? Sticky?”

“Yes sticky, Joshua Logan. Mr. Hartmann points out that the way the Chief Justice summed up the case might have created a problem. I’m paraphrasing the chief justice, but what he said went something like this:

While the court has not ruled on whether the provision in the Fourteenth Amendment applies to corporations, I am of the opinion that it does.’

“Chief Justice Waite’s personal opinion was mistaken for a ruling?”

Mary laughs:

“I told you that things got sticky! You see, at that time, it was common practice for the court recorder to add *headnotes* to his record of court proceedings, kind of like an abstract of the detailed blow-by-blow record that was to follow.”

“So, headnotes were where lawyers could go for a quick summary of a case?”

“That’s right, and in the headnotes of this case, the court recorder made an all-important erroneous statement, possibly because the Chief Justice’s summary misled him—or possibly because he had ideas of his own about how the case ought to have turned out, but didn’t.”

“So, what was this erroneous statement?”

“It was this:

The defendant corporations are persons within the intent of the clause in section 1 of the Fourteenth Amendment which forbids a State to deny to any person within its jurisdiction the equal protection of the laws.”

“The headnote got interpreted as a legal ruling, then?”

“That’s what happened, yes.”

“But, are you sure headnotes have no legal standing?”

“Mr. Hartmann had to reassure himself about that too. He spoke to constitutional lawyers and was told, more than once, that headnotes have no legal standing whatever!”

“The court clerk misrepresented the court’s decision, then?”

“I think he wrote his own conclusion about how things ought to turn out!”

“How serious are the repercussions of this—err—error?”

“Like we said, once you start a legal ball rolling, on which other cases are going to build, you run the risk of creating a string—no, a mountain—of similar rulings. Can you imagine the expense and confusion we might create, if we should decide to take issue with other rulings argued from that Santa Clara headnote?”

“But do we know how serious this error is turning out to be?”

“To paraphrase Mr. Hartmann on the issue:

The plutocracy that arose with the East India Company in 1600, and was fought back by America’s Founders, gained a new tool in Santa Clara that allowed industry in the succeeding decades, to once again, get control of most of North America, and now the world.

In case you should still have doubts about the impact on Americans of this Santa Clara error, Thom Hartmann points out that, of the 307 Fourteenth Amendment cases brought before the Supreme Court in the years between this 1886 proclamation and 1910, only 19 dealt with real people—African Americans—while 288 were suits brought by corporations seeking the rights of natural persons for themselves.”

“My God. Mary! What a marvelous miscarriage of purpose.”

“God, in his Divine Wisdom, has nothing whatever to do with this, Joshua. This is a manmade concoction entirely. To be more specific, the damage is particularly reflected in Supreme Court decisions between 1908 and 1914, when, citing corporate personhood, the court struck down minimum wage laws, workmen’s compensation laws, utility regulation, and child labor laws—every kind of law that a republic of the people might institute to protect its citizenry from corporate abuse. Unions and union members were the victims of violence from private corporate armies, and were declared ‘criminal conspiracies’ by both business leaders and politicians.”

“And that’s exactly what our founders feared would happen if corporations got to take the reins?”

“It is, Joshy!”

Joshua is overjoyed. This is exactly the kind of egregious behavior he has been longing to find. A headnote with no legal standing becomes legal policy, simply because it has been surreptitiously, and wrongly, invoked as a precedent over and over. The old man fishes for more:

“Don’t legal scholars have anything to say about the wrongness of the Santa Clara precedent?”

“Some have spoken out, but otherwise I think it’s like people just shake their heads and accept that things are the way they are.”

“So, who has spoken out?”

“Two supreme court justices, actually.”

“Really?”

“Yes! Fifty years after Santa Clara, Supreme Court Justice Hugo Black said that neither the history nor the language of the Fourteenth Amendment justified the belief that corporations are included within its protection. And sixty years after Justice Black’s opinion, Supreme Court Justice William O. Douglas claimed that there was no history, logic or reason given to support the view that corporations were legal persons.”

Joshua turns over the revelation of Santa Clara in his mind, and inevitably comes up with a cynical supposition:

“Mary, could that headnote have been a—a deliberately contrived falsehood? I mean, was it put there to mislead lawyers into believing there was a real case for industrial personhood?”

Mary chuckles:

“You’re getting off on this, are you, Joshy?”

“I only want the truth.”

“Joshua, in years of knowing you, you have never wanted the truth—unless it is scurrilous! But you know, I’m willing to bet that very few people in the court that day wanted the truth either—with the possible exception of the Chief Justice, for, according to Mr. Hartmann, he seems to have been genuinely concerned with upholding the integrity of his court. All the rest wanted corporate personhood.”

“You think the rest didn’t care how they came by it?”

“I can only give you my personal opinion on that.”

“Well, let’s hear it, then.”

“I think subsequent court hearings would not have accepted that Santa Clara headnote as a legitimate ruling, and would have challenged it, *unless* they were hugely in favor of corporate personhood already, but couldn’t find an honest legal way to go about getting it. So, they were just happy it had happened and kept their mouths shut, knowing it would soon be impossible to reverse because of use.”

“You’re saying that lawyers knew the headnote was wrong, yet they treated it like an honorable legal outcome.”

“Perhaps they swallowed it as joyfully as you have!”

Joshua brushes past another of Mary’s digs at his misanthropic nature:

“Hmmm! If, as you say, Chief Justice Waite was so concerned about the integrity of his court, why didn’t he correct the clerk’s error before it became a precedent—before the bear got out of the paddock, so to speak?”

“Mr. Hartmann looked into that question. From notes made by those living at the time, it appears Chief Justice Waite never had the opportunity to read the clerk’s headnotes in the Santa Clara case.”

“It was *his* court; why didn’t he have that opportunity?”

“There were a couple of reasons why the Chief Justice might never have been aware of the error. First of all, those were very different times to our own. It was standard procedure for the chief justice to give the court clerk authority to comment independently on the case, as he thought fit, and the court report wasn’t actually published until the court clerk submitted his manuscript to his publisher, Banks & Brothers in New York in 1887, as was the custom.”

“OK, but a conscientious Chief Justice was at liberty to check on the operation of his court, wasn’t he?”

“Well, there was an immediate reason why the Chief Justice never got to see the court recorder’s notes—ill-health. Mr. Hartmann says the Chief Justice was so ill that he missed all 1885 Supreme Court hearings. He was weak and sick in 1886 when the case was heard and also in 1887. He died in March of 1888. Mr. Hartmann tells us that the publication of the court records didn’t happen until a year after the case was heard—possibly even later—when Waite was fatally ill.

By that time lawyers for the railroad felt it was safe to announce they had seized control of personhood rights without facing denial from the Chief Justice, because he was dying.”

“So, Mr. Hartmann thinks the Chief Justice never knew what the court recorder had written?”

“That’s right!”

“Well, that focuses attention on the court recorder as a main player, doesn’t it?”

Mary laughs heartily:

“You want a donkey on which to pin your tail of deceit, don’t you Joshy?”

“Mary, I want to know if the court recorder made an honest mistake—or if he deliberately wrote a false statement into the headnotes?”

“Well, I can’t give you a satisfactory answer, because we’ll never know precisely what happened. But the name of the man you are so willing to blame is John Chandler Bancroft Davis and my unofficial opinion is that he knew exactly what he was about?”

“You are accusing Mr. Davis of fraud?”

“Let’s say I am very suspicious of this gentleman.”

“And what do you know about him that makes you suspicious?”

“First of all, he had motive. Before the Santa Clara case ever came before the Supreme Court, Davis was President of The Newburgh and New York Railway Company, and he helped develop postwar railroads in the northwestern United States.”

“So, he was an executive railroad man. But why would an executive end up a court clerk, even if he did work in the offices of the Supreme Court?”

“Ahh but you see, being a recorder for the Supreme Court at that time was not a stenographic position if that’s what you’re thinking. In fact, it was a position of high pay and prestige! Although the Chief Justice in 1886 earned \$10,500 a year, and the Associate Justices earned \$10,000 per year, the Recorder of the Court could expect an income over \$12,000 per year, between his salary and royalties from publishing the United States Reports in which the trial proceedings appeared.

Professor C. Peter Magrath, Waite’s biographer notes:

In those days the Supreme Court Recorder moved as an equal among the justices.”

“So, you think that Bancroft Davis’s railroad interests encouraged him to write into the record that corporations were persons?”

“Like I say, I think he knew exactly what he was doing! I even suspect he might have deliberately worked his way into the offices of the Supreme Court, because he thought that was the place to be to make changes in industrial policy. The movement for corporate personhood was very big by this time. So, Bancroft Davis may have been advancing a popular cause, and he might even have guessed that railroad lawyers would take the lead for railroad personhood if he could just give them a foot in the door, so to speak. I suspect his headnote might have made him a hero in the eyes of those who knew of it! Of course, I don’t know if any of that is true!”

“Hmmm! You think Bancroft Davis might have dreamed up that headnote all by himself, then?”

“Maybe, but there is room for more speculation here. Perhaps, he didn’t write it alone! In *Everyman’s Constitution*, Howard Jay Graham has proposed that the statement made by court Reporter J. C. Bancroft Davis may have been inspired by Supreme Court Justice Stephen J. Field.”

“Really! And who was this Justice Field character?”

“Justice Field was a thorn in the side of Chief Justice Waite. He frequently embarrassed the Chief Justice’s attempts to maintain an impartial court through his legal enthusiasms on behalf of the Southern Pacific Railroad. He placed his friends as counsels for the railroad in upcoming cases before the court, and he was quite openly disrespectful of Chief Justice Waite, calling him, ‘His Accidenty’ and ‘that experiment’ of Ulysses Grant.”

“I like this Field guy already!”

“He does rather sound like your type. In *Everyman’s Constitution*, Graham documents scores of attempts by Justice Field to influence or even suborn the legal process for the benefit of his patrons, the railroad corporations. Nearly a century after his death, Field’s personal letters, reveal that he was indeed proudly and deliberately suborning justice.”

Joshua snickers in glee:

“So, Justice Field didn’t endear himself to the sickly Chief Justice.”

“Waite detested him with a passion.”

Joshua snickers again. Miscreance is brewing nicely:

“Field sounds like an archetypal deviant. But the question before us is: did he persuade Bancroft Davis to write that headnote—or did he maybe write it himself and give it to Davis for him to use? How about that one?”

“Graham and Magrath, two eminent scholars—Graham on the personhood issue, and Magrath who was Waite’s biographer—both agree it is quite possible that Justice Field penned the personhood statement in the court transcript. Mr. Hartmann even noticed it is strange that Davis’ language about personhood in the headnotes reads like Field’s own language in defense of corporate personhood in lower court cases.”

“So, Davis might have asked Field for his opinion and perhaps the two of them worked out a mutual statement for the headnotes.”

“Don’t get too carried away with that idea. There’s no proof whatever that the two collaborated on the transcript. Besides, Bancroft Davis was perfectly capable of writing the statement all by himself given his railroad sympathies.”

“So, we just don’t know?”

“We’ll never know, and there are other imponderables about this case as well.”

“Like what?”

“Like the biggest unknown! The U.S. Constitution does not anywhere contain the word corporation and has never been amended to contain it, yet corporate personhood is now what the constitution defends: A ruling that never really happened has changed the purposes of our constitution, and the goals of our country!”

Joshua congratulates himself that he has landed his first big fish, without acknowledging that Mary has given it to him. He is anxious now to squeeze every last drop of naughtiness out of Santa Clara:

“What else can we get out of this fiasco?”

“Well, I s’pos we might speculate about the reach of Santa Clara in our modern world.”

“Now that sounds like a promising idea.”

“Then you’ll like this. Remember the dirty thirties, Joshua?”

“I wasn’t around then.”

“Goodness, I was sure that you were, ancient one!”

Joshua pretends he doesn’t hear this. He has to turn Mary on and off all the time. It’s irritating, but he must tolerate her jabs because she’s useful:

“Are you suggesting there’s a connection between Santa Clara and The Great Depression?”

“Don’t hold my feet to the fire on it.”

“But what possible connection might there be?”

“When millions were out of work in the thirties, everyone wanted to know who was to blame. Think about that a minute!”

“Nothing comes to mind!”

“Well, it’s true we have to reach a bit”

“Do the reaching for me, please.”

“Well, once freed by Santa Clara, the wealth created by American industrialists during the late 1800s and early 1900s led to the belief that there was no end to the wealth to be had through investment.”

“Oh, and this led to wild market speculation?”

“That’s right. But, as we know, the mad rush for more and more proved unsustainable, and we ended up with the Great D!”

“But, has anyone made a real connection between Santa Clara and the crash?”

“Sort of!”

“Sort of?”

“In 1927, Columbia history professor Charles Beard and woman’s suffrage movement activist Mary Beard published a history they called: *The Rise of American Civilization*. Perhaps you will know of it?”

“Yes, it was a book that never got much attention, I believe.”

“Not until the thirties when people were looking for someone to blame for The Big D. The book identified two potential culprits, and because of them it rose from obscurity.”

“Who did the Beards finger?”

“Two Republicans: Senator and railroad lawyer Roscoe Conkling, and Congressman and railroad lawyer John A. Bingham. In an 1882 case pitting the railroads against San Mateo County, Conkling testified that he’d slipped the ambiguous word *person* in place of *natural person* into the Fourteenth Amendment to allow corporate lawyers to hand personhood to corporations if they used a little clever wordplay in their presentations.”

“Conkling wrote the fourteenth amendment?”

“Indeed no, silly! But he was a member of the Senate committee that wrote the Fourteenth Amendment back in 1868. According to Conkling’s own public

announcement, he was personally responsible for the word ‘person’ in that Amendment.”

“And Bingham, what did he contribute?”

“He claimed publicly that he worked tirelessly in the House of Representatives to get the language passed.”

“Couldn’t they both have made up their story just for the notoriety it might bring them?”

“Well, their political behavior suggests they were both capable of it, and Conkling and Bingham did become railroad darlings as a result. You can draw your own conclusions.”

“People fell for their story about the wording of ‘person’ in the amendment!”

“Many people wanted ‘persons’ to refer to businesses. They wanted it fervently, I think...”

...And that, my dear misanthrope, is the story of the first major bust-out of corporate personhood in America. What d’you think of it?”

“I gotta have a brandy and a smoke to mull it over, but right now I love it.”

“OK Joshy, go mix Santa Clara with tobacco and liquor and see what you come up with.”

Joshua is gone in a puff of tobacco smoke, and Mary hangs up thinking it’s always the same with him. He pumps her for information, goes away, then comes back for more. She tolerates this insouciance, yet she wonders why she does so. Is she perhaps flattered because the old lunatic thinks she’s an oracle or something? Or could it be that their conversations confirm her suspicion that humanity lacks the ability to govern itself wisely—an idea she does not relish, but one that fascinates her, as a moth is drawn to a lamp?

As for Joshua, he is content for the moment—very content in fact. The old man blows smoke rings happily and watches as gusts of wind whisk them away—gone in a trice, just as citizen personhood was whisked away from people on a single day in 1886, on the say so of a court clerk.

What an ego trip this is! Sitting on his cheap balcony chair, the old man thinks about how far he has already come, unwilling to admit that the distance he has travelled—all of it at the moment—is thanks to Mary. He tells himself instead that he has a nose for scandal sharper than anyone he ever met.

But there’s more to Santa Clara—much more.

Based on just a few lines of print written by J. C. Bancroft Davis, the Supreme Court set in motion an avalanche of the corporate appropriations of people’s rights: corporate speech rights under the First Amendment, corporate privacy protection under the Fourth Amendment, corporate rights against self-incrimination under the Fifth Amendment, corporate personhood rights under the Fourteenth Amendment. Corporations are claiming the Sixth Amendment, the right to a speedy and fair trial; the Seventh Amendment, the Right to Trial by Jury and the Eighth Amendment, forbidding cruel or unusual Treatment of the corporate body.

Giant agricultural operations, toxic waste operators, and large chain stores are now able to argue before the courts that keeping them out of a neighborhood or a community is the same thing as forbidding a black person from sitting at a lunch counter. They are all, it seems, claiming their Fourteenth Amendment rights as freed slaves under the law—and they have indeed been freed from the obligation to the people placed upon them by our Founding Fathers.

Thanks to J. C. Bancroft Davis and the Supreme Court, a textile corporation has successfully invoked the fifth double jeopardy clause to avoid retrial in a criminal antitrust action. A consortium of major corporations, including the First National Bank of Boston, has joined in a first amendment lawsuit to overturn state restrictions on corporate spending for political referendums. An electrical and plumbing concern has invoked the fourth amendment—the right to personal protection from invasion of privacy—to thwart federal inspections under the Occupational Safety and Health Act. A California public utility has relied on the first amendment to overturn state regulations designed to lower utility rates.

So, not only have corporations made the constitution apply to them, they are using it as a shield against counterattack whenever they plunder the rights of the living and breathing mortals that the constitution was written to defend. The enormity of this scandal astonishes even our ancient rascal who has made a living rummaging through the viscera of historical scandals.

In fact, so far have those few words of J. C. Bancroft Davis travelled since Santa Clara, that the old man believes they are now become as much a *milestone* for corporate power, as they are a *millstone* for democracy.

So, given that J. C. Bancroft Davis may even have made America the empire it is today, where is the statue in his honor? Where is the steel and glass cathedral bearing his name? In stature he belongs above Vanderbilt, Rockefeller, and Carnegie, for he, perhaps alone even, made all things possible for them. Yet, he remains in obscurity, the unsung hero of the nineteenth century.

Our old sleuth had not expected to find such a bold and deliberate ‘modernizing’ of the constitution, and so soon in his inquiry, but now that the seeds of anti-democratic malfeasance are sown in the old misanthrope’s brain, he is sure he will find more. There is surely a mine of tunnels and burrows to be excavated, and he is ripe for the challenge.

Having observed what he sees as naughtiness in the highest court of the land, Joshua wonders what integrity ought to mean for the legal profession as a whole?

Scientists like his old friend Hafferty are careful to document every conclusion they make with well-substantiated research, and if there should be insufficient evidence for a definitive conclusion then they make an hypothesis—a platform upon which to build further study—so the resolution of a problem may proceed according to a well-articulated course of action.

Isn’t it true, then, that science advances through a continual search for truth, but is this also true for the law where integrity is surely just as important? Joshua isn’t sure. Oh, it’s not that lawyers don’t value truth; it’s that they are employed to

dispute points of view without immediate regard to moral purpose. In law it seems, victory comes before veracity.

The old man imagines giant ethical porcupines roaming free in every courtroom of the land, around which lawyers must dance lest they become impaled on the quills of a falsehood. The issue of legal integrity troubles him, not because he values integrity—he doesn't particularly—but because he does not understand the meaning of integrity in a legal context.

Reasons our old buzzard: if he were a lawyer who dared to protest the ethics of a precedent his legal team were arguing, he might find himself dismissed, without a job, and living with a reputation as a troublemaker. So, while good scientists try to be impartial, good lawyers must always be totally partial to the needs of their clients, no matter how rotten they perceive them to be. A scientist's game is fair play and as English as cricket; a lawyer's game is purest poker!

Joshua knows himself to be a poker player. He concludes that, if victory, not rightness, determines legal conduct, then codes of ethics ought to be imposed on courts throughout the land, including the Supreme Court. The old man quickly discovers that there are indeed *state codes* of legal conduct, varying according to location, local practice, and custom. But Mr. Hartmann reminds us that there is no code of ethics whatever for The Supreme Court of the land.

Now isn't that interesting? When every local court must abide by a code of conduct, there is only a requirement of *Good Behavior* for The Supreme Court—the court that is particularly charged with defending the integrity of our constitution and with passing fair judgment on cases brought before it from lower courts, all over the land, that do have codes of conduct they are obliged to follow?

Why is the Supreme Court so exempted? What were our founders thinking when they mandated good behavior as a sufficient standard for the leading justices of the land?

Joshua discovers he is not the only person asking this question. Senator Chris Murphy (D-Conn) has observed:

The American people deserve to know that our highest court is held to the highest ethical standards and, as Representative Louise Slaughter, D-NY, 25th District, said in a press release: *It doesn't make sense that members of the highest court in the land are the only federal judges exempt from any code of conduct.*

So, what is being done about the absence of a Supreme Court code of ethics?

Well, as a matter of fact, nothing is being done at the moment. Our ancient misanthrope finds this shortcoming quite as marvelous as the indiscretions of *Santa Clara* itself. Members of Congress have insisted that the creation of an ethics code for the SC falls under their purview because they say, Congress already determines how many justices sit on the Supreme Court and what they are to be paid.

Very well then, has Congress acted to impose a code of conduct on the Supreme Court? No, it has not although, to be fair, some Members of Congress have tried to do so!

In 2017, a Supreme Court Ethics Act was introduced in congress to require the court to adopt a code of ethics within 180 days of passage, but the conservative party in Congress at the time blocked passage of the act!

Now, why would a majority in congress so willingly block an act seemingly desirable for the good of the country, especially since the supreme court has been in the hands of a conservative majority since the 1970s? It is well documented that some of our supreme court justices have participated in political functions, failed to report family income, and attended fundraisers—not exactly the impartial behavior citizens have a right to expect of those responsible for the laws of their land, So, isn't there a real need for those who represent us in congress to demand a code of ethics for the Supreme Court?

There's another strange thing about this failed effort of congress to impose a code of conduct on the SC—the plan called for the court to establish its own code of conduct. Now, if the integrity of the Justices is in question enough that a code of conduct should be required of them—we are all human after all—why would members of congress entrust the justices with writing their own?

Thinks the old man; there has to be a devious answer, and he finds one right away.

Fair minded liberals in congress must have known that there was little hope their colleagues in the conservative majority would agree to a code of conduct for a Supreme Court under their control. So, it was likely apparent to them that no ethics bill a democrat might devise, could pass without the support of some members of that republican majority.

How might you get some individuals among the conservative majority to vote for a code of conduct? Well, perhaps if you allowed the justices to write their own code, then the ethics act might gain enough support to pass!

It was a valiant hope but, voting in a block, the conservative majority crushed the bill. It was like there was a family thing going on—the family supports its own. Thinks the old fellow, if there is a family thing, then of course the family would crush an ethics bill, because its passage would open the door for further restrictions that well-meaning legislators might wish to impose on the conservative SC in future.

Joshua now discovers that members of congress are not the only ones pushing for ethical reforms in the SC. In 2012, 212 legal scholars sent a letter urging Chief Justice Roberts to adopt a code of conduct and to date, more than 130,000 Americans have signed a petition asking for the same. The Chief Justice has not responded to these requests!

To be fair, Chief Justice John Roberts hasn't refused to respond; he has just failed to respond. Indeed, the chief justice probably considers he does not need to respond, since our founders determined that members of his court were expected to serve on the angelic prospect of 'good behavior' without supervision—a laughably absurd expectation, thinks our cynical old sleuth. But that is just the way things were set up, whatever we may think of it today.

Joshua is becoming accustomed to reading between the lines, reaching for a buried treasure of indiscretions secreted between the words, in a white space of ignoble implication. He suspects that government inaction over matters that concern the welfare of the population as a whole may be partisan and clubby, but he does not yet know what he means by such an assertion. So, the old man starts to speculate.

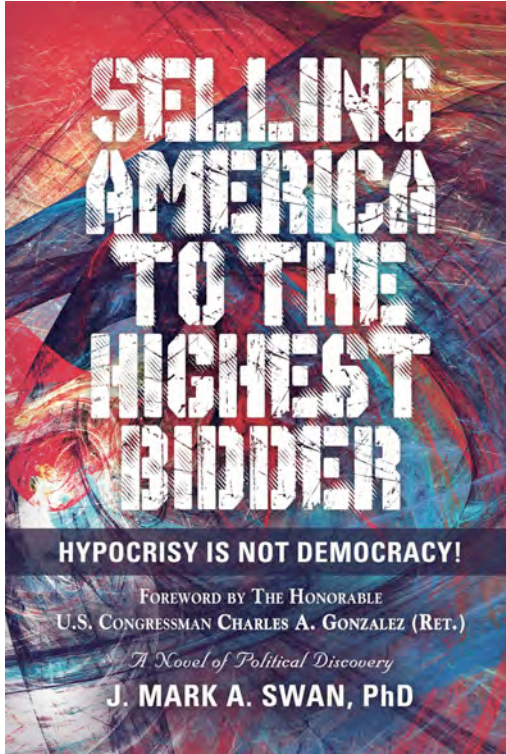
What if conservatives should be able to sew up elections so well that congress becomes a one-party system, then Chief Justice Roberts would have no need whatever to respond to requests for accountability, because same-party lawmakers would never ask it of him?

In the old man's mind, this reopens the enticing possibility that, circulating in the halls of government, there might be a grand plan to gut the will of the people. The thought thrills our ancient sleuth as he dwells upon it. If Chief Justice Roberts won't allow a code of court ethics when asked by the people to set one, *and* if Congress won't mandate it because of partisan politics, then what agency, person, or persons can *ever* make it happen?

Joshua observes that Supreme Court Justices are presently nominated and appointed because of political ideology, not because of their devotion to the delicate needs of a republic and its human cargo!

So, it looks like the SC is a bit of a loose-cannon. *If* the conservative majority can do whatever they want to do, and *if* the court has had at least 100 more years to free-wheel its activities, *surely* the court will have meddled again with the laws of our republic, since Santa Clara?

It's time to find out.



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