



Resident Skeptic – POLITICS

by

James R. Cowles

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## Politics

### Chapter 1 – Over-reaction and the Pooling of Ignorance

**Note: This column was written and scheduled for publication before the results of the election were known. I publish it now only as an exercise in nostalgia: hearkening back to a time when we could indulge the collective fantasy that the American judicial system would not become the administrator of *shari'a* law, Trump style. Enjoy while you still can!**

Left-wingers and progressives have just as much potential to be amygdala-driven fanatics as people on the religious right. Doubt me? Take a look at “It’s Time To Expel Senate Republicans For Violating the Constitution” recently forwarded to Facebook from a site called PoliticsUSA. The most salient virtue of the piece is to provide a sterling example of Justice David Souter’s recent warning on YouTube about the dangers of “pervasive civic ignorance”. Part of that “civic ignorance” is a failure to recognize *the important distinction between constitutional issues and political issues*. The refusal of Senate Republicans to hold confirmation hearings on the President’s nomination of Judge Merrick Garland to fill the Supreme Court vacancy left by Justice Antonin Scalia’s death is a case in point. So is the oft-repeated vow of Senate Republicans to not confirm **any** Supreme Court nominees of a President Hillary Clinton. By seeking to take the indisputably scandalous behavior of the Senate Republican leadership and fob responsibility for that behavior off onto the US Constitution is only to reinforce “civic ignorance” by denying the responsibility of American voters to police and to punish the conduct of their own duly elected legislators. Yes, there is a crisis. The article is right in that regard. **But the crisis is political, not constitutional.**

The “terse text” of the Constitution regarding the President’s nominating power is very ... well ... *terse* and unadorned. Article II, section 2, paragraph 2 says:

*[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties ... and by and with the Advice and Consent of the Senate, shall appoint ... Judges to the Supreme Court ...*

Period. That’s all. There is language in Article III about Supreme Court Justices, though nothing about any specific number of Justices, which is always set by ordinary statutory law. The text most relevant to the PoliticsUSA article, however, is conspicuous only by reason of its **absence**: *a time-table or time limits for the nomination and confirmation of Supreme Court Justices*. In fact, there is no time-table or schedule or “drop-dead date” associated with *any* office subject to the appointive power of the President and the confirmatory power of the Senate.

Language like “violating the Constitution” is grossly overblown, misleading, and irresponsible. It implies that the dilatory Republican Senators are engaging in overtly criminal conduct – “violating” the Constitution, the “supreme law of the land” (Article VI, “supremacy clause”), would be criminal by definition – when, in fact, the Senators are merely being incompetent, politically driven, room-temp-IQ, where-the-sun-don’t-shine intimate bodily orifices. In fact, this is actually a contest of dueling ignoramuses: PoliticsUSA for suggesting that the Senators’ behavior is criminal, and people like Mitch McConnell for urging that the American people be given a “voice” in the selection of Justice

Scalia's replacement. He and his *vox-populi*-intoxicated colleagues need to read Article III of the Constitution again and note that **nowhere in that Article – or anywhere else in the Document – are the people given a voice in the elevation of jurists to the Supreme Court.** The only voice the people have vis a vis Supreme Court appointments is indirect: by electing the President and the Senators who do have a direct voice. (The Framers had good reason to cut the people out of the direct loop, reasons I have neither the time nor the space to even synopsise here. Suffice to say that we should be glad they did, because sometimes the most constructive thing *vox populi* can do is to STFU. I would to Great Cthulhu and the Old Ones that the individual States had made service on the State supreme courts purely appointive. The State of Kansas, in particular, would be a rather happier place these days, had they done so.) So my reaction to the PoliticsUSA article and to McConnell & Co.: a plague on both your houses.

But the PoliticsUSA piece is inconsistent, even in its own terms. In criticism of Mitch McConnell, PoliticsUSA cites an article by Ian Millhiser about *NRA v. Reno* in which the latter takes McConnell to task for reading into a Federal law requiring the purging of gun-purchase records **a time limit that is not there.** One can only wish that the author of the original Politics USA article had been as fastidious about the presence or absence of time limits in the Constitution vis a vis Senate confirmations of Supreme Court nominations. PoliticsUSA cannot even seem to remember the proper name of Judge Garland:

*More recently it was another Republican Senator, Richard Burr, who weighed in and told Republican supporters that not only was President Obama's SCOTUS nominee Merrick Gardner [sic] not going to be confirmed after the election, he pledged that no nominee would be confirmed if Hillary Clinton is elected in November.*

One more time: the name of the President's Supreme Court nominee to replace the late Justice Antonin Scalia is Merrick **Garland**. One can only repeat the President's remark about Sen. Marco Rubio's hell-or-high-water determination to vote for Donald J. Trump: *Aw, c'mon man!* At least get his **name** right!

But the PoliticsUSA piece is right about the fundamental issue: there is a crisis. But the crisis consists in Republican Senators simply not doing the job they were elected to do. Not doing the job *feloniously*. Not doing the job *corruptly*. Just not doing the job, period. The first two modes of not doing their job – through felony and corruption – are outright criminal. And the Senate itself has the power under the Constitution to deal with such instances by the expedient of expulsion, at which point criminal law and criminal prosecution can take the process the rest of the way. **But, short of actual criminal negligence and malfeasance, not doing your job, period, is not a crime. Nor is sheer, castrated hound-dawg, just-fer-the-helluvit laziness.** The customary way of dealing with the latter as a purely political issue is the venerable, hoary, and time-honored and -tested means of voting the duplicitous, malingering whang-doodles out of office at the earliest opportunity. No need to allege constitutional violations. No need for accusations of “high crimes and misdemeanors”. **Use the damn vote.** No need for a photon torpedo, or even a plain-vanilla hydrogen bomb.

Strictly the *un-nuclear* option: **just vote.**

PS -- *[W]hensoever any Form of Government becomes destructive of these ends [of life, liberty, and the pursuit of happiness], it is the Right of the People to alter or to abolish it, and to institute new*

*Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. -- T. Jefferson, Declaration of Independence, 1776*



## Chapter 2 – “Progressive” Blindspots and “Progressive” Censorship

*Judge not, that ye be not judged. [2] For with what judgment ye judge, ye shall be judged: and with what measure ye mete, it shall be measured to you again. [3] And why beholdest thou the mote that is in thy brother's eye, but considerest not the beam that is in thine own eye? [4] Or how wilt thou say to thy brother, Let me pull out the mote out of thine eye; and, behold, a beam is in thine own eye? [5] Thou hypocrite, first cast out the beam out of thine own 'eye; and then shalt thou see clearly to cast out the mote out of thy brother's eye. -- Matt. 7:1-5*

I understand, and even agree with, Darrell Lackey’s argument that Christians, especially Christians of a decidedly conservative bent, politically and theologically, sometimes do get upset about the wrong things, or at least lesser things, in the sense of straining at the proverbial gnat while swallowing the proverbial camel. However, *the way Lackey points attention* to this mis-ordering of priorities at least arguably *implicates him in the same mis-ordering* in a way that makes the beam in his own eye less obvious to him than is the mote in his conservative siblings’ eye. This blind spot is also evident in the eyes of other progressive believers.

Lackey cites a talk by Tony Campolo where Campolo says

*First, while you were sleeping last night, 30,000 kids died of starvation or diseases related to malnutrition. Second, most of you don't give a shit.*

Lackey argues – as does Campolo – that somewhere along the way, Campolo’s use of scatological language overshadowed the obviously far more important catastrophe of 30,000 kids “dying of starvation”. Granted all. Nevertheless, I do wonder if ringing up points about Christians’ mis-ordering of moral priorities does not in itself detract from what one would have thought had the greater claim on our attention: the mass starvation of thousands of children. Is it not at least possible that shifting the focus of one’s attention **to the descriptive semiotics of a problem and away from the problem itself** constitutes a kind of decoy or diversion that is itself at least morally ambiguous? By doing so, do we *talk about the way we talk* instead of addressing *the issue or problem that we talk about*? The case can be made that both Campolo and Lackey take aim at the easier target first. And among progressives, they are neither the first nor the only ones to do so.

In at least a couple of instances – matters pertaining to sexuality and gender – progressives have a persistent tendency to construct for themselves semiotic echo chambers to which none, or very few, are admitted except the initiated, and to greet with resistance, and sometimes outright hostility, those who, perhaps from an innocent desire to learn, seek to become fluent in the “in-language”. There is nothing at all wrong with having an “in-language”. Computer / IT geeks have an “in-language”. Trekkies have an “in-language”. *Walking Dead* and *Fear the Walking Dead* geeks have an “in-language”. Mathematicians have an “in-language”. So do practitioners of sexuality and gender studies. *The difference is that the former communities are, at least in my experience, immensely more congenial than the latter in sharing with others the grammar and syntax of their argot.*

By now, the vocabulary of alternative sexualities is something I no longer find daunting. In the beginning, though, I was intimidated by a welter of prefixes – “trans-“, “bi-“, “cis-“, etc., etc. – not nearly so much because of my sheer unfamiliarity as because of the reflexive hostility I often encountered from people who saw me instinctively as the oppressor and who questioned my motives

for wanting to learn. By contrast, when I was traveling to Japan on business, I was also often confused about the correct Japanese word or expression, but I always, and with no exception, found Japanese nationals understanding, gracious, and accommodating of my attempts to communicate in my fractured *gai-jin* Japanese. Once I realized I would not, as I originally feared, be ostracized by my lack of skill in speaking Japanese, my Japanese hosts and I could get down to business and discuss the problem that had brought me to Yokohama or Tokyo or wherever in the first place. But I ended up having to spend an inordinate amount of time convincing my friends that my difficulty in navigating the linguistics of sexuality studies was ignorance I wanted to remedy and not a tool I wanted to use to subvert the identity and equality of alternative-sexuality minorities. So in the latter case, we mostly talked about talking than about the core issues of human dignity and worth.

Ditto gender issues. There is an “in-language” here, too. And again, there is nothing wrong with having an “in-language”, any more than there is something wrong with physicists, Bible scholars, and jazz musicians having an “in-language”. But again, as with sexuality issues, the need to ask questions, and the willingness to ask them, have a tendency to detract from one’s credibility and sincerity in a manner not evident with physicists, Bible scholars, and jazz musicians. For example, quite often in reading a paper in gender studies, I encounter terms like “womyn”, “womxn”, “herstory”, etc., etc. Granted, asking questions about the definition and etymology of such terms can be, and for me has often been, a valuable entrée into learning about the ideological principles and axioms behind those terms. But, at least in the context of gender issues, that kind of learning has usually been accomplished indirectly and as a result of penetrating the fog of the accompanying suspicion about why I am asking about the meaning and origin of those terms in the first place. The semiotic tail has usually wagged the discursive dog, and, as with sexuality studies, we end up talking about talking and not about gender.

The above two examples about sexuality and gender studies are my personal equivalents of Campolo and Lackey getting sidetracked from mass starvation onto the side-road of “shit”. In the long run, this is a minor annoyance. At the end of the day, I was able to talk about issues of sexuality and gender, if not quite as a member in full standing of the semiotic community in question, then at least as a trusted outsider and visitor.

But more serious consequences ensue when linguistic and discursive diversions sometimes make it well-nigh impossible to talk about genuine atrocities and abuse, especially atrocities and abuse committed in the name of religion. Probably the prime example of this phenomenon was on display not too long ago with that by-now-legendary episode of *Real Time* in which Bill Maher and Sam Harris tangled with Ben Affleck and Nicholas Kristof about the alleged existence within Islam of a uniquely pronounced propensity for violence. (Maher and Harris argued “Yes”; Affleck and Kristof argued “No”. Full disclosure: I agreed, and still agree, with Maher and Harris.) What I still to this day find remarkable about that exchange is the degree to which Affleck and Kristof -- I think because of their visceral revulsion against **any** criticism of **any** religious belief and practice whatsoever (a phenomenon Sam Harris discusses early in his first book *The End of Faith*) -- simply **cannot hear or process** Maher’s and Harris’s (one would have thought) commonsense assertion, abundantly justified by empirical evidence, that (a) no, not all Muslims are, even latently, potential dynamite-vested terrorists; but nevertheless (b) yes, there is something unique to Islam itself that predisposes those Muslims who do have that potential to act on it, and to do so violently. In the course of the discussion, it becomes evident that both Affleck and Kristof are more committed to critiquing Maher’s and Harris’s rhetoric than they are to either’s citation of facts, data, and evidence. Maher and Harris want to talk **about facts**

**and data**; Affleck and Kristof, **about the act of talking itself**. Maher and Harris want to talk about mass starvation; Affleck and Kristof, about the use of the word “shit”.

I could cite other examples, e.g., Ayaan Hirsi Ali being dis-invited from campus visits because of her honest and forthright language describing her experience as a Muslim woman (up to and including female genital mutilation, she describes in excruciating detail in her memoir *Infidel*); Salman Rushdie not being invited to a literary festival in India. There is also the unsuccessful attempt to rescind an invitation to Bill Maher to speak at Berkeley – ironically, the cradle of the “free speech” movement under Mario Savio – not because of any error or misrepresentation of the status of civil liberties or of women in Muslim societies, but because of his forthrightness about these issues on *Real Time*. (At the opposite extreme, contrast this with Columbia University's courage in inviting then-President Mahmoud Ahmadinejad of Iran to speak: the same person who explicitly threatened genocide against the state of Israel.) So we end up talking about “shit” in preference to talking about starvation.

When talking about **talking** supplants talking about the issues that need to be talked **about**, the most relevant question – arguably, the only relevant question – is the one from the old cell-phone commercial: “Can you hear me now?” Sometimes, apparently, the answer is “No”.



## Chapter 3 – Bully Pulpit and Bullshit

Several times in the process of playing my role of “voice crying in the wilderness” against the plague of Trump and Trumpism, I have encountered *relatively* temperate and *relatively* reasonable Trump supporters who said that, no, they were revolted by Trump’s advocacy of violence against his critics, prejudice against Muslims, the muzzling of a free press, and his condoning of sexual assault, because, yes, they recognized the reality of offenses in all those areas against personal dignity and constitutional liberty. **But** ... you could hear the thundering hoofbeats of the "But" all the way across the Galaxy ... Trump did advocate several policies they supported. And, besides, they concluded, the Presidency was, by the design of the Framers, a pretty weak office, anyway, in fact, more or less a mere “bully pulpit” for the advocacy of an agenda. The “bully pulpit” allusion is revealing in itself: the term was coined by Theodore Roosevelt over a century ago, and to use the phrase to describe the 20<sup>th</sup>- / 21<sup>st</sup>-century Presidency reveals a breathtaking degree of historical ignorance. But I will skate over that and instead point out two instances – one much earlier than Mr. Roosevelt; one much later – that demonstrate how powerful the Presidency can be when aided and abetted by political and historical circumstance. In these cases, the Presidency is immeasurably more than a mere “bully *pulpit*”, and can be a conduit for the propagation of dangerous *bullshit*.

### o The Sedition Act of 1798

In 1798, the Congress passed, and President John Adams signed, four acts – the Alien Act, the Alien Friends Act, the Naturalization Act, and the Sedition Act – that were all about equally dangerous. I single out the Sedition Act because it struck most directly at the constitutional basis for free speech and a free press. In fact, **the Sedition Act of 1798 had the practical effect of repealing the “abridgement” clause of the First Amendment:** *Congress shall make no law ... abridging the freedom of speech or of the press ...* Yet that is precisely what Congress and the Adams Administration did in 1798. Under the terms of the Sedition Act, individuals and newspapers who ventured even the mildest, most tentative, most rationally conceived, and most civilly expressed adverse criticism of the government could be arrested, tried, and jailed if convicted. Idle remarks in taverns, even if made in jest, could result in criminal charges and imprisonment if the wrong persons overheard the remark.

The passage of the Sedition Act and the subsequent arrest and trial of newspaper editors and pamphlet writers – the bloggers of the 18<sup>th</sup> century – resulted in an upwelling of rage. But the public outcry was muted because the late 1790s was also a time when it was widely feared that war with the global superpower of France was imminent. In fact, this brewing conflict was often referred to at the time as the “quasi-war” with France. So, given that French agents could be on American soil clandestinely agitating, in writing and in speeches, in favor of a policy of military and diplomatic weakness under color of being honest ex-pats and immigrants, the prevailing winds of politics favored a stance of security over liberty. Hence, also, the Alien and Alien Friends Acts that were overtly anti-immigrant and that, with the related Naturalization Act passed at around the same time, greatly extended the residency requirements of potential immigrants to the United States. Under the latter, the President could simply order the deportation, without due process, of non-American nationals he **personally** deemed as disloyal and threats to national security. This was a time of xenophobia not unlike today.

But beyond even *that*, what were the most basic and enabling root causes of the Sedition Act of 1798? I can identify three: (1) a shared and intense *fear* on the part of the public – in this case, fear of war with France, which the US could not hope to win; (2) a President and a Congress that were (2a) *of the*

same political party and that (2b) shared that fear; (3) a certain moral flabbiness on the part of Congress, especially of the dominant party (Federalists in 1798) to stand up and question the prevailing climate of fear and President Adams' way of dealing with it by abridging First Amendment liberties. (In fairness to Mr. Adams, we should also give his Administration credit for avoiding the feared war: the "quasi-war" with France remained merely "quasi".) For all practical purposes, the Federalist Congress in 1798 abdicated its Article I duty to act as a check to the Executive, *electing instead to transform itself into a mere extension of the Presidency*, the better to do the President's bidding. **When power is united with fear, and when both are being used in the service of a single man – in the 1798 case, John Adams – it is time to sound a very loud alarm.**

At that point, the Presidency ceases to be a mere "bully pulpit" and becomes instead a conduit for demagogic bullshit.

### **o President Franklin D. Roosevelt's Japanese internment order (EO 9066) of February, 1942**

As it was with the Sedition of Act, so it was with FDR's EO 9066: a combination of fear and a monopoly on political power.

The fear component is understandable: Pearl Harbor had been attacked on 7 December 1941 and most of the US's Pacific Fleet was either sunk or severely damaged. All that preserved the fleet as a significant defense force was that the great aircraft carriers of the Pacific Fleet happened to be absent from Pearl Harbor on the day of the attack. Had that not been the case -- had the American carrier fleet been sunk along with the great dreadnoughts lining "Battleship Row" -- quite literally nothing would have stood between the West Coast and an air and land assault by Imperial Japan on Seattle, Portland, San Francisco, Los Angeles, and San Diego, to name just a few. People of my generation, the post-war generation, the "Baby Boomers" -- I was born in 1949 -- have and **can** have no conception of the fear that gripped the Nation in the wake of the Pearl Harbor attack. It is only something we -- and I -- read about in books.

Also, as in 1798, Congress was controlled by FDR's Democratic Party, which was riding a wave of public adulation at the actions Mr. Roosevelt had taken to mitigate the effects of the Crash of 1929 -- despite the Supreme Court's unremitting hostility to virtually all aspects of the New Deal. So the "mono-partisan" -- single-party, i.e., the President's party -- government of the Executive and Legislative Branches that characterized the politics of 1798 was largely replicated in 1942. The year 1942 is important because, like 1798, 1942 was the year when, because of fear combined with "mono-partisan" politics, the Constitution was once more violated and marginalized. In 1798, fear and a partisan monopoly in the Executive and Legislative Branches led to the violation the "abridgement" clause of the First Amendment. In 1942, the internment of Japanese Americans violated the 5th and 14th Amendments, in particular, the "due process" clause of both and the "equal protection" clause of the latter. (I say this despite the fact that the Supreme Court in 1943 upheld the constitutionality of the internment order in *Hirabayashi vs. US*, and in 1944 in *Korematsu v. US*. *Hirabayashi* and *Korematsu* are the Japanese equivalent of *Dred Scott v. Sandford* of 1857.) It is exquisitely ironic that, when Mr. Roosevelt said "The only thing we have to fear is fear itself", he himself, with the internment order, provided a vivid lesson about how truly he spoke: **fear is indeed to be feared because, when widely shared and when combined with a partisan monopoly on Executive and Legislative power, fear can be used to abridge fundamental constitutional rights.** (If you think this is a dead issue this long after the war, think again: Michelle Malkin has written a book, *In Defense of Internment*, defending

EO 9066.) Fear can turn the Constitution and Bill of Rights into precisely the "parchment barriers" Mr. Madison warned Mr. Jefferson about in his letter to the latter of October, 1788.

Fear plus a monolithic monopoly on power can transform the "bully pulpit" of the Presidency into a pipeline for bullshit. That has already happened (at least) twice in our history ... and may well be in the process of occurring a third time.

### **o Trump, Trumpism, and today's politics of fear and mono-partisan government**

Mark Twain was right: history does not repeat, but it often rhymes. All three of the above elements - - fear, mono-partisanism, and a willingness to use ruthlessly the power of both -- is a distinct possibility, perhaps even already a reality. Especially among Trump's base, the fear derives from several disparate but related sources: immigration and immigrants, Islam, perceived or real economic bias against the US via trade agreements, and a generalized and ill-defined sense of malaise traceable to a perception of America as in decline. The irony is that *Trump himself provides evidence for that decline* in his constant obsequious toadying to Vladimir Putin. How does one argue *against* an America-in-decline thesis when the President himself defers time and again to Russian economic and foreign policy?

And, unlike in 1798 when the vulnerability of the Constitution was localized primarily in the "abridgement" clause of the First Amendment, and in 1942, when that vulnerability pertained primarily to the 5th and 14th Amendments, the Trump Administration, ostensibly concerned with mitigating the fear driving the Trump faithful, is assaulting the Constitution on several fronts at once: freedom of the press, 14th Amendment protections for non-citizens, 8th Amendment prohibitions of "cruel and unusual" punishment, and even the 2nd Amendment, as interpreted by *DC v. Heller* and *Heller's* acceptance -- the late Justice Scalia's acceptance, no less! -- of the necessity for common-sense gun restrictions. Add all that together with the fact that Donald Trump, and many of the Trump faithful currently infesting the Executive Branch, owe no allegiance, and know virtually nothing about, the Enlightenment roots supporting the American -- in fact, the *Western* -- socio-political culture. They are not merely conservatives, because they are interested in **conserving** nothing, and attracted only to the brute and raw exercise of power for its own sake and for personal aggrandizement. Under those circumstances -- and, as in 1798 and 1942, energized by a shared fear -- it is practically guaranteed that the Presidency will be transformed from Theodore Roosevelt's "bully pulpit" into a bullshit pipeline that will make Keystone XL look like a martini straw by comparison, all the more so because Trump & Co. breathe the noxious vapors that comprise the atmosphere of postmodernist epistemological nihilism that views objective truth as a quaint but outdated relic only suitable for display on *Antiques Roadshow*.

So what can be done? We -- meaning the US in particular, but including the West in general -- need cadres of people who can do for Enlightenment social and political values what Madison and Jefferson did vis a vis the Sedition Act of 1798 and what Messrs. Korematsu and Hirabayashi did vis a vis EO 9066: swim against the prevailing social, political, intellectual, and moral current. How does one jump-start that kind of cultural insurgency? Well, I would suggest considering Donald Trump as the Nation's first truly post-modernist / fascist President would be a good place to start.

## Chapter 4 – Cassandra’s Lament

According to Greek mythology, Cassandra, daughter of King Priam and Queen Hecuba of Troy, spurned Apollo’s sexual advances and was cursed by the god with the gift of uttering prophecies (about the fall of Troy, the assassination of Agamemnon, etc.) which were unfailingly accurate ... but which no one ever believed. I can sympathize.

If you read nothing else I write in my “Skeptic’s” columns, for your own sake please read this one. If you don’t have the time, then **make** the time. It really is that important:

If you have children, especially little children, and if your finances and circumstances permit — which I fully realize they may not — if at all possible, **leave, or seriously prepare to leave, the United States**. And go where? I would suggest Canada (preferably) or New Zealand or Australia. Or, if you are more affluent than average, the UK (except Ulster / Northern Ireland). Or the Irish Republic (Southern Ireland). Or any of the Scandinavian countries.

The reason should be obvious. On 3 August 1914 British Foreign Secretary Sir Edward Grey, First Viscount Grey of Fallodon, famously said “The lamps are going out all over Europe, we shall not see them lit again in our lifetime”. We in the US, and probably in most of the West (with the exceptions in the previous paragraph), can say the same thing. In 1914 Sir Edward’s grim warning was prompted by the imminence of the First World War (the “Great War”, as it was quaintly known then); today, almost exactly 100 years later, "the lamps are going out all over [the West]" because of the rise of fascism in Europe and the Presidency of Donald Trump via the “fasc-ization” of the Republican Party. And the timorousness and knife-to-a-gunfight timidity of the Democrats. At this time above all, and despite the understandable human tendency to flinch away, it is critical nevertheless to face one salient fact and to ask yourself one salient question:

o First the fact: there will be, at most, a blue ripple in November, not a blue wave and least of all a blue tsunami. (In fact, a red wave is not altogether out of the question.) The Congress of 2019 will be substantially the Congress of 2018. And the crowning *frisson* of terror: Donald Trump will be re-elected in 2020.

The straws were long ago in the wind that enable me to state the above with confidence, e.g., the rise in Trump's popularity from around 30 percent immediately after his inauguration to the low 40s today, the persistence of his popularity among even mainstream Republicans, the continuing strong economy and stock market as traditional harbingers of all Presidents' future political fortunes, etc. As far as I can tell, the "crash" long hoped for by progressives and Democrats, and flatly predicted in economic terms shortly after the election by Paul Krugman, appears nowhere on the horizon. If I extrapolate current trends, I see Republicans continuing to control Congress and Trump back in the White House in 2020.

Perhaps if American voters took seriously the principles enunciated in their own Constitution, the above predictions might fail. But they don't, so they won't. They apparently subscribe to those principles in a kind of vague, abstract, kids-reciting-catechism way in order to sound good on polls. But I say categorically that, if Americans valued their Constitution as it *deserves* to be valued, Trump's candidacy would have been toast the moment he publicly advocated trampling the First Amendment by **litigating** the *Washington Post* out of existence for carrying stories less than complimentary about

him, his policies, and his Administration. What Americans do care about, enough to vote accordingly, are not matters of high constitutional principle, but matters of high finance: is the stock market still north of 24,000? is unemployment below 4%? is household income increasing, however glacially? Those issues, not bourgeois bagatelles like, e.g., separation of powers, an independent Judiciary, due process, etc., etc., are the questions that will determine votes, and on those issues, to speak plainly, Trump wins.

o Consequently the question: *do you want your children to grow up under Trump's and the Republicans' Fourth Reich?*

What is going on now a Hegelian historian or philosopher would call “world-historical”, not merely a transient spasm. The Enlightenment of the 18th century that gave us the classical-liberal, rights-centric, latitudinarian socio-political culture is drawing to a close. Sir Edward Grey’s “lamps are going out” for Western classical-liberal socio-political orders. What takes its place will probably be some cognate of a nihilistic post-modernism. The best we can hope for is a 21st-century version of Singapore under Lee Kwan Yew. I repeat: the best.

Whatever precise form this new world order assumes, it is virtually guaranteed to not be “healthy for children and other living things”. We are already seeing the beginnings of Trump's and the Republicans' *Endloesung* -- "Final Solution" -- in the building and implementation of Auschwitzes and Treblinkas and Maidaneks and Sobibors and Theresienstadts for little immigrant children and -- quite literally -- for infants torn from their mothers' breasts. (If there someday were trials at The Hague for crimes against humanity — as there should be — no doubt ICE agents would argue that they were “just following orders”.) What will it be like in the early 2020s during a Trump second term? Even if you are not an immigrant, your child is not safe. Only reasonably safe, quasi-safe, approximately safe. **In the Trump regime, no child is really safe.** This is not "No child left *behind*". This is "No child left *in peace*". You assume otherwise only at your child's peril. So as Dirty Harry said: “Feelin’ lucky?”

Moreover, we can take no comfort from recent events, including mass protests against "zero tolerance" and judicial injunctions suspending same, that have forced the Trump junta -- however grudgingly -- to retreat from a pure policy of "zero tolerance". After all, how encouraged should we be that it requires hundreds of people in the streets and multiple court orders to force the Administration to step back from a policy of calculated cruelty, child abuse, and legalized kidnapping -- all without recourse to due process? (If it required hundreds of people picketing outside your house and judicial intervention to force you to stop beating your children, what would that say about your competence and trustworthiness as a parent? Would you be encouraged about your parenting skills?) Moreover, this entire process of revoking or suspending "zero tolerance" family separation is something that Trump himself initially asserted he had no legal warrant to undertake -- yet which he accomplished with a single executive order.

Understand the following at all cost: this is **not** a normal case of the political pendulum swinging left, then right. A much better analogy would be early 1933, when the late-Weimar German *Reichstag* (legislature) passed the so-called “Enabling Act”, whereby the *Reichstag* dissolved itself and gave unlimited dictatorial powers to *Reichskanzler* Adolf Hitler. (This Act by the *Reichstag* was even quite legal under Article 48 of the Weimar constitution!) With neither the House nor the Senate willing to fulfill its Article I obligation to act as a check on the Executive, the Congress has done the practical equivalent of dissolving itself. If you respond to this by mumbling bromides about Godwin’s Law, you

demonstrate only a lack of imagination exacerbated by historical illiteracy. Or if you are prone to dismiss me as a boy crying “Wolf!”, remember that at the end of that story a real wolf actually showed up.

Nevertheless, there are a few places left where Enlightenment principles still prevail. I mentioned a few such oases above. Hence my advice: if you have children, **leave now**. Don’t wait to develop “a sense of urgency”. By the time you do so, it will almost certainly be too late. **Leave now**. By the time you are ready emotionally, it will almost certainly be too late. **Leave now**.

Ultimately it’s up to you. It’s your funeral. No one believed Cassandra. Most likely, no one will believe me, either. To be brutally honest with you, the primary purpose of the foregoing warnings is not to motivate you — though if you do end up being motivated, so much the better, of course — but to absolve me, to give me peace of mind. Like Cassandra, I did what I could. As with Cassandra, you have been warned. Like Cassandra, my conscience is now clear.

I tried.



## Chapter 5 – Of Chicken Little, Falling Skies, and the Un-Tax

**Now that -- thanks partly to Republican intransigence about "repeal and replace" -- ACA / Obamacare (which, remember, are the same thing) is in the news again, and, especially when confronted with the Republican alternatives, people have gotten to know and to fall in love with Obamacare all over again, I thought it might be useful to post this column from a couple of years ago about the "mechanics" of Obamacare. Had the Republican repeal effort succeeded, I believe we would have had one more instance of Joni Mitchell's perennial question: "Don't it always seem to go that you don't know what you've got til it's gone?"**

In case you think the story of Chicken Little's cry "The sky is falling!" is something from a fable, you should know that a cognate form of this fable has been acted out in real life every time conservatives and progressives have clashed over any matter involving any significant alteration of the social and economic conditions of American society. That is to be expected: conservatives ... well ... conservatives **conserve**. So conservatives said the sky would fall if slavery ended, because formerly enslaved black men would take up arms, kill their former masters, and rape white women; or that if women could vote, they would abandon their husbands and children in favor of lives of prostitution ... and they might even *smoke*, etc., etc. Now similar alarms are being raised about unprecedented levels of ostensibly stultifying and godless government coercion that are certain to arise from the Affordable Care Act (ACA), a.k.a. Obamacare or O'care. Well, walk outside. Look up. You will observe that the sky is still there. It will be there tomorrow. ACA is about as revolutionary as Lawrence Welk playing Form 1040 and Schedule A as sheet music. In fact, far from being revolutionary, O'care is firmly embedded within the near-century-old tradition of using the tax code as an instrument of behavior modification. It's business as usual, nothing to worry about.

It's about as innovative as buying a house. You have two basic choices *vis a vis* housing: live in someone else's house / apartment, or buy your own house. Rent or buy? That's an impossible question to answer at that level of generality. But certainly one important factor to take into account are the tax consequences of home ownership. If you elect to buy your own house, then you can leverage the income-tax deductions relating to mortgage interest and real-estate taxes. So, if you buy your own house, these deductions mean that, all other factors being equal, your tax liability will be **less**, relative to what your tax liability *would have been* if you had continued living in rental housing. On the other hand, if you elect to continue living in rental housing instead of buying a house, you will **not** be able to take advantages of these deductions. In that case, and all other factors being equal, the result will be that your tax liability will be **greater**, compared to what it *would have been* if you had bought your own house. That is why, at least from a tax standpoint, buying your own house is so advantageous: it amounts to a choice of paying *yourself* (by purchasing something *you* own) instead of paying the government (in the form of an additional tax burden).

Note three simple things about this well-known scenario: (1) the tax incentive to buy a house is written into the tax code, so as to (2) encode into the tax laws an incentive to pursue a form of behavior – buying your own house – that, for arguably good and sufficient reasons, Congress believed was socially beneficial for the Nation at large, but (3) does so in such a way as to *leave the ultimate decision – rent or buy? – strictly up to the individual*. **The tax code incentivizes home ownership but does not mandate it.**

Now for the other half of the analogy. Under ACA, buying – nor not – health insurance is about as boring as buying a house ... which is to say, be careful reading about it, lest you descend into an irreversible coma. You may either buy your own health insurance or you may elect not to do so. If you elect to buy your own health insurance, then your tax liability will be **less**, relative to what it *would have been* if you had not bought health insurance, because you will not be assessed the *misnamed* (see below) “individual-mandate penalty”. This is analogous to buying a house, leveraging the mortgage-interest and real-estate tax deductions, and so reducing your tax liability. Or you may elect to **not** buy health insurance, in which case, as a result of the ... one more time ... *misnamed* “individual-mandate penalty”, your tax liability will be **greater**.

The three simple things about this scenario correspond to the previous three simple things about buying a house: (1) the tax incentive to buy health insurance is written into the tax code, so as to (2) encode into the tax laws an incentive to pursue a form of behavior – buying health insurance – that, for arguably good and sufficient reasons, Congress believed was socially beneficial for the Nation at large, but (3) does so in such a way as to *leave the ultimate decision – buy health insurance or not? – strictly up to the individual*. **The tax code incentivizes but does not mandate the purchase of health insurance just as the tax code incentivizes but does not mandate buying a house.**

And speaking of mandating and not mandating, please note: **there is no "individual mandate"**. A "mandate" is an absolute categorical command to engage in a certain type of behavior, e.g., a subpoena to testify in court is a *true* mandate. A *true* mandate, properly so-called, is not a case of "do-it-or-not". A *true* mandate is a case of "do-it-or-else". The so-called "individual mandate" is in the former, not the latter, category. Ditto the equally-misnamed "employer mandate", though that is a rant for another time.

But what about penalizing people for not buying health insurance? I could as well ask the same question about buying a house. If you own a house, take your previous year's tax return, back out the mortgage-interest and real-estate tax deductions, and recalculate what your tax liability *would have been* if you did not own a house. Subtract your *actual* tax liability from *that*. The *difference* is the additional tax you would have paid for **not** being a home owner. In other words, that additional tax -- that "delta-dollars" -- represents the “penalty” you would have paid for choosing to live in an apartment. Bottom line: **there is no more of a penalty for not buying health insurance than there is a penalty for not buying a house**. Or more accurately: **if one is a penalty, then so is the other**. If the tax code “coerces” you to buy health insurance, then – in the very same sense and to the very same degree – the tax code “coerces” you to buy a house. So conservatives should be howling as grievously about the latter as about the former. (In fact, they should be howling grievously about *all* the Schedule A deductions, all of which are incentives to engage in a certain type of behavior, e.g., contributing to charity: the tax code is chock-full of such *faux* "penalties".) That conservatives do not thus caterwaul belies either their understanding of the law or just plain mendacity. That is why the “penalty” is misnamed. As the Supreme Court determined in *NFIB v. Sebelius*, the “penalty” is not a “penalty”. It is a tax.

Well ... are you bored until you weep yet? ***If so, then ... good!*** ... Your boredom means that you are getting the hang of how **un**-revolutionary O'care is. Obamacare is merely one more step in an almost-century-old strategy whereby the government manipulates the tax code to encourage socially constructive behavior -- without abrogating individual choice. Again: the key word is "incentive" not "coercion". (There is a lot of coercion in the tax code, of course, e.g., if your income exceeds a certain

threshold, you are *coerced* into paying taxes in the first place, and you are *coerced* into *not* counting your daughter's Guinea pig as a dependent.) Oh, to be sure, the consequences of ACA will indeed be significant. The previously unbreakable bond between health insurance and employment will be dissolved, and health care will be universal -- basically an entitlement like Social Security and Medicare that will mean additional security -- not an absolute guarantee ... if you want one of those, go buy a fridge from Sears ... but at least an end to the prospect of bankruptcy and penury because of a single serious illness. (This issue of security is, I think, what actually torments conservatives within the secret, usually unacknowledged, recesses of their hearts: the prospect that the vicissitudes of chance -- which many of them see as a vehicle for the outworking of Divine Providence -- will no longer have a monopoly on people's lives. Either that, or conservatives have a clandestine nostalgia for a kind of "soft slavery" that *de facto* binds people to the plantations of the 20th and 21st centuries, colloquially known as "corporations". My money says the latter ... but never mind.) Even in the present law, there is still ample kowtowing and knuckling-under to Big Pharma and Big Medicine, and in the best of all possible worlds, we would have instituted something like "Medicare for all". (The biggest mistake ACA makes is trying to treat health care / insurance as a kind of bastardized, neither-fish-nor-fowl hybrid of public utility and private business.) Nevertheless, as Dr. King said, quoting the old slave hymn "We ain't what we ought to be, and we ain't what we gonna be, but thank God we ain't what we was!"

## Chapter 6 – A Political Diagnosis

I am writing this late in the evening before Donald Trump's inauguration as the 45<sup>th</sup> President of the United States. But this column is not about Trump. It is about President – as he still is, as this is written – Barack Hussein Obama. It is customary among professional historians to wait a decent interval, usually on the order of at least a generation, before attempting to assess the legacy of any President ... or any scientist ... or any military leader ... or any artist ... or any philosopher ... or ... etc. There are good reasons for this, having to do with avoiding the "tyranny of the recent" by allowing for the growth of some historical perspective. But my purpose is not to assess the *legacy* of the President. My purpose is to assess *the man himself*, and delay can dull memories and dim recollections to the point that one ends up assessing a wraith, a faded and fading mental daguerreotype of a living human being. And in any case, I am not a professional historian, and so do not consider myself bound by the conventions of The Guild. So here goes ...

As much as I admire the President, I freely acknowledge that he did suffer from one tragic flaw: **he was, and is, a doggedly, indefatigably, insistent, incorrigibly, and tenaciously rational man** who believes in facts and data, who defers to science, who is bend-over-backwards religiously tolerant, who is always predisposed to be (at times, to me, exasperatingly) charitable toward his political and ideological adversaries – and who, for all those reasons, is committed to the principle of formulating public policy with reference to the prefrontal cerebral cortex and not the amygdala and endocrine glands. This is not in any way to insinuate that the President is a “policy Terminator,” a Commander-Data-like wonk devoid of emotion, who has no more affect than a table of logarithms. Anyone who saw him at “Mother Emanuel” as he sang “Amazing Grace”, anyone who saw him weep for the children slaughtered at Sandy Hook, anyone who heard his moving tribute to Mrs. Obama and his daughters could never believe that. But it does most emphatically mean that *his primary engine for formulating and articulating public policy is his capacity for a rational appraisal of the national interest, not an emotion-driven, shoot-from-the-hip spasm originating in the gut.* That's OK. That's quite fine. Same was true of the Founders of the Nation and of the men who framed its Constitution. The same could be said of Washington, Madison, Jefferson, Paine, Franklin, George Mason, Hamilton, etc., etc., etc. They and the President share great expanses of common ideological and intellectual DNA.

**For both they and the President were, and are, brazenly, blatantly, and unapologetically men of the European Enlightenment, in particular, the British and Scottish Enlightenment.**

Problem is, the President -- it may well be in his zeal to ascribe the best motives to others until proven wrong – believed the same of congressional Republicans. I am easily old enough to remember when such a belief would have been amply justified in the days of Eisenhower, Ford, Rockefeller, even Ronald Reagan, i.e., the Reagan who could sit down with Speaker O'Neill and hash out their differences over a good bourbon. Dwight Eisenhower defeated Adlai Stevenson in **two** consecutive campaigns for the Presidency, but one has extreme difficulty imagining them as *enemies*, a la Trump and Mrs. Clinton. For some time after Reagan – exactly when matters not a whit – the GOP experienced a hostile takeover on the part of people – the TEA Party – who, originally populists opposed to Big X (where X may be “Pharma”, “Oil”, “Insurance” ... etc.), ended up being co-opted and turned into the *servants* of the very interests the TEA Party once opposed. In the halcyon days, the late William F. Buckley could have on his literate, urbane, and witty – for so conservatism was back then – talk / debate show *Firing Line* guests like Prof. Arthur M. Schlesinger, with whom Buckley disagreed on

just about everything. Everyone understood *Firing Line* was a metaphor, a trope. Not so in the post-TEA-Party universe of right-wing talk radio, take-no-prisoners rhetoric, and shouts of “You lie!” during presidential addresses to Congress, where the quality of discourse more closely resembles the rancorous exchanges between Buckley and Gore Vidal of later years.

I honestly believe that the President did not understand, until far too late and perhaps not even then, the radical, antipodal difference of temperament separating him from his Republican (**not merely political**) adversaries. There is a certain endearing innocence in that, even so, but it proved to be a **fatal** innocence. (Seriously now: I still wonder if the President has a cynical bone in his entire body.) Add in that which I will pass mercifully over – being already depressed enough – namely, the infusion into the TEA Party of extreme right-wing, conservative, often fundamentalist, religious passion, which dislocates its shoulder waving the Flag with one hand even as it seeks to *de facto* repeal the “establishment” clause of the First Amendment with the other, and you have about as **un**-Enlightenment and **un**-Obama an environment as can be imagined. And – again, seriously now – it is into *this* environment that the President, especially after the disastrous 2010 elections, ventured to sell infrastructure legislation and to nominate a moderate, even right-of-center, and eminently qualified (even by avowed Republican standards) jurist, Merrick Garland, to occupy Justice Scalia’s old seat on the Court? Really? Truly? Honestly? Of course, yes, granted, the President had to **be** the President, which meant nominating someone to fill the vacant Supreme Court seat, sending to Congress an infrastructure package -- not terribly different from its Trump counterpart that met with Republican adulation -- that was, as the President must have known, as DOA as last week's oatmeal. Etc., etc. The President, to his credit, did his duty. But one can as easily imagine Frodo and Sauron initiating a "peace process" about the conflict in Middle Earth; or Aquinas negotiating with Augustine; or Augustine with Pelagius; or Voltaire with Rev. John Hagee; or Carl Sagan with Jerry Falwell (and Falwell *files*); or Giordano Bruno with the Inquisition; or Charles I with Oliver Cromwell. Or a constitutional-law professor confronting the Balrog with a copy of Justice Joseph Story's *Commentaries on the Constitution of the United States*.

Too late the President realized that he was attempting to deliver a Gifford Lecture on Kant's *Critique of Pure Reason* to the inmates of the old Bedlam mental hospital in Victorian England. And now the patients seem to have seized control -- we fervently hope temporarily -- of the hospital.

As for President Obama -- for such he still is as of this writing -- we can say of him what Shakespeare's Hamlet said of his late father: *He was a man, take him for all in all, [we] shall not look upon his like again.*

## Chapter 7 – The Moral Obtuseness of Moral Equivalency

I am learning – the hard way – to get knee-jerkingly suspicious every time someone mentions the phrase “moral equivalency” – and certainly when anyone attempts to employ moral equivalency in arguments. I suppose there are occasions when that term, and that rhetorical tactic, are justified, but I have not encountered any examples lately, least of all examples in real life. In fact, I would even make bold to say that at least 90% of the time – and I mean for that number to be interpreted quite literally – entities and acts that are said to be “morally equivalent” are anything but. Most of the time “morally equivalency” could be more accurately rephrased as “moral imbecility”. Two examples leap to mine immediately.

President Trump – two words that make about as much sense when used together as “two-sided triangle” – recently took some richly justified heat when he condemned the violence at the University of Virginia-Charlottesville ... you know ... the school whose campus was designed by Thomas Jefferson ... as being perpetrated by “many sides”: *We condemn in the strongest possible terms this egregious display of hatred, bigotry and violence, **on many sides. On many sides.*** (boldface added). One is left wondering if his repetition of the phrase “on many sides” is intended to insinuate that some **non-white-supremacist** terrorist drove his car into a gaggle of innocent American skinheads, fascists, and neo-Nazis. If so, such an event escaped the attention of the omnipresent news media. We can all be thankful that Trump, who is a moral philosopher only in the same sense that a prison chain gang of rock-breakers is a community of Bernini- and DaVinci-caliber sculptors, was not a journalist reporting on the Warsaw Ghetto uprising against the Nazis during the Polish Occupation: *We condemn in the strongest possible terms this egregious display of hatred, bigotry and violence, **by Jews as well as Nazis. By Jews as well as Nazis.*** But one must constantly bear in mind that this is just Trump being Trump, the President who perhaps wants to carpet-bomb Venezuela with food while cutting food-stamp money for military families at home. Like the peace of God, it “passes all understanding”.

Somewhat more subtle – comparison with Trump sets the “subtlety bar” pretty low! – is the kind of rhetoric one encounters from time to time, presumably among people who have no business not knowing better, but who pride themselves on bending over backward to be disinterestedly fair-minded, alleging that the Republican and Democratic Parties are both equally corrupt because “Aw, gee-gawrsh” – here the speaker removes his index finger from his nostril and examines the results of such prospecting – “they *both* do it!” Not exactly a “booger” of an argument, even when illustrated with slick imagery like that immediately below on the left. I will certainly not break a lance arguing that the Democratic Party is the repository of all political wisdom and propriety. But – as a matter of historical fact, assuming anyone studies history anymore, which assumption is far from limpidly clear – they both don’t do it to anything like the same extent, and least of all do “they both do it” with the kind of stiff-middle-finger brazenness so evident during the Obama years. Herewith some questions:

- o Which Party adamantly and with cyborg-like reliability continues to oppose even modest efforts to regulate firearms commerce – like true universal background checks – advocated by roughly 90% of Americans, even in the face of “slaughters of the Innocents” like the Newtown, CT, shootings? If the First Amendment were interpreted this anarchically, falsely yelling “Fire!” in a crowded theater *would be protected speech*.

- o Which Party nominated a candidate who – ignoring precedents like *NY Times v. Sullivan*, about which one may be assured he knows less than nothing – advocates “opening up” libel laws, the better



to enable aggrieved neo-fascists to sue dissident news media into financial submission. And by the way, does that candidate even know that there are no national- / Federal-level libel laws?

o Which Party nominated a candidate who, running roughshod over the “establishment” and “free exercise” clauses of the First Amendment – to say nothing of the “due process” clause of the Fifth and Fourteenth, and the “equal protection” clause of the latter – would institute registration of Muslims, even native-American-born Muslims, and the warrantless surveillance of their mosques?

o Which Party’s candidate advocated oil-drilling and mining on national-monument land, and signed an executive order to that effect once in office? At considerable risk of giving him ideas, I will say that I am getting more than a little hinky about the security of the Gettysburg Battlefield, Arlington Cemetery, and the Tomb of the Unknowns.

o Which Party’s candidate taps into an evidently inexhaustible reservoir of braggadocio about how the American military is always “locked and loaded” while cutting food-stamp support for their families? I have worked closely in the past with members of the Services, and, to their eternal credit, they are indeed “locked and loaded”. Now we can add a third adjective: “hungry”.

o Which Party confirmed as Secretary of Education a woman, Betsy DeVos, whose avowed intent is to privatize education with the ostensible goal of improving it, but whose real agenda is to enable schools thus privatized to thereby circumvent the “establishment” clause of the First Amendment so as to re-introduce prayer and Bible-reading into schools, and to substitute creationism and intelligent design for legitimate biology in school science curricula?

o Which Party’s candidate views with such alarm the decline of coal-mining jobs in the US, but who is evidently apathetic about the combined number of dancer / choreographer and podiatrists’ jobs, which equal roughly 50% of coal mining employment? Why is there no proportional hysteria about the job crises in professional dancers / choreographers and (the closely related field of) podiatry? Are dancers and podiatrists not equally deserving of gainful employment? Are they, unlike coal miners, to be relegated to public assistance, and thereby summarily consigned to Speaker Ryan’s Hammock of Laziness? Which leaves us with a burning question: without podiatrists, who will save those dancers’ soles. Finally, I was wrong in my initial assessment. In the process of writing this column, I have reappraised my cynicism about the strategy of “moral equivalence” in ethical discourse. In fact, I have discovered one context in which the attitudes and rhetoric of “moral equivalence” are fully justified. Compare the current Republican Congress and Republican Executive Branch ... oops! ... sorry! ... I’m being redundant! ... with a similar combination of the National Socialist Party of the 1940s and *National Lampoon’s Animal House*. Or think of it as “Horst Wessel Meets The Three Stooges”.

The universal all-purpose answer to all the above "Which Party ... " questions: **It damn well ain't the Democrats.**

Now *that's* what **I** call true "moral equivalence", for which I read "moral imbecility": the resemblance is positively uncanny

## Chapter 8 – The Rhyme of History

I cannot vouch for the source, but Mark Twain is reputed to have once remarked “History doesn’t repeat, but it sometimes rhymes”. For reasons of both personal history and temperament, I have always found it difficult to be optimistic. But in the wake – an apt word, if ever there was one! – of the recent presidential election, I find it flatly impossible, and even trying to be such would grate on my sensibilities as an exercise in dishonesty. The most I can do at this point is to offer some perspective. But even this, modest as it is, may turn out to be considerably less than comforting and encouraging. For the precedent I am going to cite, the most relevant template, will be the final death throes of the Weimar Republic and the rise of fascism in Germany, as embodied in Adolf Hitler. And before your knee jerks and you cite Godwin’s Law, I will concede that, yes, Godwin’s Law is indeed a serious cautionary critique of the tendency to cry “Wolf!” But in the same breath, please allow me to remind you of how that story ended: in the end, the wolf turned out to be real.

The following parallels should make any rational person nervous.

### **The Myth of the Stab in the Back**

In the years following the declaration of the Armistice in 1918 and the official signing of the Treaty of Versailles in 1919, the belief metastasized that the Germany army was actually in the process of **winning** World War I – or at the very least, holding its own. The Kaiser’s forces, the argument went, would eventually have prevailed, but for a traitorous conspiracy of German industrialists, the financial elite – most especially Jews – who undertook to stab Germany in the back – the infamous *Dolchstoß in den Ruecken* – that led to surrender on the battlefield and national humiliation at Versailles.

Very early in his presidential campaign, Donald Trump argued that the US had suffered the mercantile, monetary equivalent of the Weimar *Dolchstoß*. “We [the US] never win anymore,” he argued, citing NAFTA as past precedent and the President’s advocacy of the Trans-Pacific Partnership (TPP) as a future part of that incipient “America last” tradition. At least implicitly and by inference, agreements like the Iran nuclear deal – and even fundamental alliances like NATO and defense pacts with, e.g., Japan and South Korea -- are instances of American naivete in the face of hard dealing by adversaries ... and even by friends. I will not break a lance defending NAFTA or TPP. But the idea, which Trump has been careful to foster, that the defense of France, Germany, and Japan is exclusively an exercise in pure, uncompensated American altruism with no selfish admixture of defending **American** interests in Europe and northern Asia is in the tradition of the fascist depiction of one’s own nation as the perpetually cheated victim ... rather like white individuals who always complain of “reverse racism”.

Playing the “victim card” is a reliable fascist rhetorical ploy. As this past election shows, it works surprisingly well.

### **Danger from Subversive Groups**

With the fascists of the immediately post-Weimar era – actually, beginning in the early Middle Ages with the “Christ-killer” and “blood libel” myths – Jews were seen as commanding the financial and academic heights of European civilization to the exclusion of Gentile, specifically Aryan, people. Hence the Nuremberg Laws; hence the Star-of-David lapel patches.

With Trump, the 21<sup>st</sup>-century equivalent is Muslims. Not just jihadist sociopaths like the extremists who attacked London, Madrid, Paris, and the Hollenbeek area of Brussels, and who attacked the Pentagon and the World Trade Center on 9 / 11 ... but Muslims *per se*, Muslims *tout court*. Hence “Muslim registration”; hence the proposed prohibition of Muslim immigration without regard to criminal record.

### **Aggressive Militarism**

I hardly need to rehearse the history of the Austrian *AnschluB* of 1936 or the perfidious surrender of the *Sudetenland*, and eventually all of Czechoslovakia, by Daladier and Chamberlain in 1938 – eventuating in the invasion of Poland on 1 September 1939. And I will mercifully skip the rest of World War II, of which these events were only the earliest overtures.

To his credit – I say this with all due caution – Trump does seem rationally and prudently reluctant to engage in “nation building” – an activity he professed to revile in his recent meeting with the media elites in Trump Tower. But the reason I am so cautious is because I also remember his vow to “bomb the [...] out of ISIS,” and to resort to military force in retaliation for Iranian sailors giving the crew of American naval vessels in the Persian Gulf a middle-finger salute.

### **Contempt for “Imperfect People”**

All the fascists of the 1930s had a perverse and perverted talent for warping the highest achievements of European culture. Mussolini could warp Roman history, politics, and culture for his purposes. Hitler would turn Franz Josef Haydn’s *String Quartet No. 62 in C-Major*, a heartbreakingly tender 1797 anthem in honor of the birthday of the Holy Roman Emperor Francis II, into a jackbooted celebration of Teutonic martial violence in *Deutschland Ueber Alles* (“Germany! Germany over all in the world!”), and even out-Nietzsche’d Nietzsche in the advocacy of racial purity.

Donald Trump feels similarly free to “rate” women by their anatomical characteristics – and to supplement that attitude with actual empirical research under women’s skirts and underwear. As for people born with physical limitations ... everyone remembers his ridicule of a *New York Times* reporter, Serge Kovalski, with a neurological condition. And at the recent convocation in Trump Tower, he admonished an editor of the *New York Times* for portraying him as too fat.

### **Disregard of Constitutional Government and Due Process**

Hitler was at least brazenly honest in requiring the Bundestag to pass the *Ermaechtigungsgesetz* (the so-called “Enabling Act”) of 1933 whereby Hitler’s *de facto* status of absolute dictator was given a thin veneer of *de jure* parliamentary legitimacy.

Trump seems determined to achieve the same goal piecemeal. He is already on record as advocating the “open[ing] up” of libel laws to facilitate bringing suit against media outlets – specifically the *New York Times*, the *Washington Post*, and others – for daring to criticize his public statements and policies. Never mind that there is no *national- / Federal-level* libel statute. (In Trump’s America, we can all be thankful that *New York Times v. Sullivan* remains to free speech what the 14<sup>th</sup> and 15<sup>th</sup> Amendments were to black slaves, though how long it will remain such depends on the decisions of a future Supreme Court dominated by Trump appointees. Trump would be as glad to rid himself of

*Sullivan* as conservative evangelical pro-life Christians would be to be rid of *Roe* and *Casey*.) Trump's contempt for due process needs no more proof than his statement that section 1 of the 14<sup>th</sup> Amendment applies only to US citizens, though the language explicitly says "persons," with the sole exception of the "privileges or immunities" clause. (Similar remarks apply *vis a vis* the "due process" clause of the 5<sup>th</sup> Amendment, which likewise uses "person" language.)

Notwithstanding my contempt for Trump as a constitutional scholar, I would make bold to predict that he will demonstrate at least a rudimentary knowledge of the US Constitution in one especially critical way: at some point in his Presidency, he will seriously propose, perhaps through his spineless-wonder, tapioca-backed *gauleiters* in Congress, the repeal of the 22<sup>nd</sup> Amendment limiting a President to two terms. Such a constitutional amendment may well be motivated by an overly inflated allegation of some 21<sup>st</sup>-century equivalent of the Reichstag fire of February, 1933, maybe a supposed plot -- by Muslims, of course -- to detonate a dirty bomb or a biological agent. No evidence? No problem! Least of all in a "post-factual" era when mere repetition, in conjunction with the "M-word," renders any statement self-authenticating. Remember: you read it here first!

'Way back in the Middle Cambrian, when it was still possible to disagree vehemently yet civilly, I remember an episode of William F. Buckley's urbane and sophisticated discussion / debate show *Firing Line* when Buckley's guest for the evening was Dr. Arthur Schlesinger, historian and one of the senior knights of the Kennedy Camelot. Schlesinger made a remark to Buckley that has stuck with me ever since. He said people born in and acculturated to life in a constitutionally governed, latitudinarian, "rights-centric" republic very often have a hard time believing that the authoritarian-and-demagogue-*du jour* actually means **precisely what he or she says**. So Hitler becomes in their minds a mere frustrated artist; Mussolini, a mere buffoon; Trump, a mere windbag. Like Daladier and Chamberlain, they believe the hungry wolf at the door is actually an overgrown, playful puppy. Like Daladier and Chamberlain, they believe the wolf is a wolf only when it is too late.

So ... if you call me a rank pessimist, I will not object. I will claim the title proudly. You see, I agree with Prof. Schlesinger: I still believe in wolves.

## Chapter 9 – How to Be Seduced by Your Own Cherished Prejudices

If there are any Trump supporters reading this, I urgently advise you, before you read any farther, to place across both knees a large book like *Gray's Anatomy* or the unabridged *Oxford English Dictionary*, because I can guarantee that at some point, your knee will jerk, which could cause you to kick your coffee table over or result in a shoe flying off your foot and through your TV screen. There ... you have been warned. (You might also reflexively shout in a Terminator or Robbie-the-Robot voice “Godwin’s Law ... Godwin’s Law ... Godwin’s Law”, but unless you disturb your neighbors, no harm / no foul.) Why? Because this “Skeptic’s” column is about parallels, which I insist are neither gratuitous nor imaginary nor fictitious, between Donald Trump and Adolf Hitler. I would also recommend that you take to heart Davi Barker’s admonition about Godwin’s Law (boldface added): *Mike Godwin’s original intention [in initially articulating Godwin’s law] was to curb gratuitous comparisons to Nazis so that valid comparisons could retain their explanatory and cautionary power. It was never intended to be invoked as a complete ban on such comparisons.* I spent the better part of the time between 2005 and 2007 – long before Donald Trump rose to prominence -- reading, some would say obsessively, almost nothing except material about the history of Weimar Germany between 1918 and 1933. My conclusion? Mark Twain was right: history does not repeat, but it sometimes rhymes. Following is a case in point:

Like all authoritarian demagogues in history, both Trump and Hitler displayed great finesse in taking *problems that were genuine* – and that aroused the anger and fear of great segments of their fellow citizens – and leveraging these issues so as to gain and to increase their political power. (So did leaders of The Terror during the French Revolution. So did the Bolsheviks who led the Russian Revolution of 1917. Examples could be multiplied many times over.) In the case of Hitler, these issues included catastrophic levels of unemployment, much of it resulting from the mustering-out of former soldiers at the end of the War who were entering an already-depressed and jobless economy; national humiliation over the terms of the Treaty of Versailles; and hyper-inflation of German currency. (Regarding the latter, I highly recommend Adam Fergusson’s economic horror story *When Money Dies: The Nightmare of Deficit Spending, Devaluation, and Hyperinflation in Weimar Germany*. Also Frederick Taylor’s *The Downfall of Money: Germany’s Hyperinflation and the Destruction of the Middle Class*. Speaking of hyperinflation as one of Germany’s most urgent problems, the latter book records the breathtaking fact that, in the autumn of 1923, it took 2 **trillion** German marks to buy a single American dollar. Most of the hyperinflation was over by the time Hitler took office in 1933, but public confidence in the financial system was still shaken.) There was also the political instability of the German nation, which had only been a tenuously unified political entity since the end of the Franco-Prussian War in 1870-72. (Prime example: whether Bavaria would remain in Germany or declare independent statehood was a serious question in the Weimar era.) The list goes on, but the critical point to note is that ***all these were grave problems, none were made up, none were exaggerated, and all demanded a solution.*** Fast forward to the US in 2016. Equally grave issues for us are immigration and border control, income inequality, climate change, and globalist trade agreements that primarily benefit the “elite-ist” of the elite. These are no less real for the United States of 2016 than hyperinflation and mass unemployment were for Weimar Germany in the (plus / minus) 1920s.

But the real virtuosity of both Trump and Hitler *vis a vis* their respective problem-sets was not merely *recognizing* the reality of the challenges, but in (a) **selecting which challenges to foreground** in their campaigns and political rhetoric, and (b) in **proposing solutions that their respective followers would be likely, usually on purely emotional grounds, to support** most enthusiastically. In both

cases, the decision as to which problems to emphasize was determined by what I call the “twisted-knickers criterion” (TKC): which problems / challenges are the ones most likely to get your supporters’ knickers in a twist? A contemporary example, China is very adept at keeping its national currency artificially weak, relative to the dollar, so that Chinese exports are quite cheap, relative to their American strong-dollar counterparts. This problem is equally real, arguably equally serious and no less worthy of attention. But how many pairs of knickers are twisted by the thought of artificial Chinese currency manipulation? Except for the intimate apparel of tenured professors of economics, essentially none. But manufacturing jobs being offshored because of cheap labor abroad ... the TKC coefficient of that issue is off the charts. Ditto border security in an age of international terror. With Hitler, the no-less-real problems were mass unemployment, the Versailles humiliation, and rising street violence at political rallies – all with very high TKC coefficients.

The TKC coefficient is critical because it is the key to the psychological leverage needed to motivate your supporters. In principle, using the TKC coefficient is simplicity itself: *you echo back to your followers the very solutions that seem most obvious to them*. Not to you. **To them**. You validate their solutions to these high-energy issues by telling your followers **what they want to hear**. Unemployment? Scrap the Versailles limits on German armaments and start rebuilding the old Prussian military. (This must be, and was, done very discreetly, very *sub rosa*.) Start Volkswagen (which Hitler did). Political unrest at rallies? Send in your own brownshirt cadre and bust some heads. (This was a solution also advocated by Trump early in his campaign. He even vowed to pay legal expenses.) Are Jews unfairly monopolizing the professions, academe, and high finance? Pass the Nuremberg Laws. (For 500 years, Christian Europe had punished Jews by prohibiting Jews from practicing most professions except money-lending. So after 25 generations, *of course* they were good at it as a community, especially when you couple that with the pre-existing affinity for academics so integral to Jewish life and culture. **Jews were blamed for being good at one of the few professions the Church allowed them to practice!** See Goetz Aly’s excellent study *Why the Germans? Why the Jews?*) Of course, as H. L. Mencken once caustically asserted, “For every problem there is a solution which is simple, clean and wrong.” But if you are Hitler or Trump and really want to amass raw political power, you never – **absolutely never** – want to quote Mencken out loud. Rather the whole point is just the opposite: to *validate*. You *validate* your supporters by validating their solutions, no matter how unrealistic and unworkable those solutions may be. (Later, you may have to gently renege on some of these solutions, just as Trump seems to be doing re the border wall by having the American taxpayer pay the initial bill while vaguely promising that Mexico will reimburse the up-front cost -- which Mexico continues to stoutly aver it will never do. But if you are suave and smooth about it, your followers will not be discomfited, because they are still subsisting on the raw energy you gave them by validating them in the first place. *After feeling ignored and slighted for so long, the least fillip of validation starts you jonesing for more!* Very like getting someone hooked on crystal meth.) Take people who are frightened, angry, and insecure; affirm their fear, anger, and insecurity; validate *them* by validating their *solutions* ... and you can surf their insecurities and fears all the way to the Berlin Reichschancellery – and the Oval Office. Never underestimate the power of raw fear coupled with unconditional positive regard. I’ve been there -- a number of years ago -- and done that. And I can tell you it makes you neither dumb nor a brute. Just human. From *The Art of the Deal*:

The final key to the way I promote is bravado. I play to people’s fantasies. People may not always think big themselves, but they can still get very excited by those who do. That’s why a little hyperbole never hurts. People want to believe something is the biggest and the greatest and the most spectacular.



I call it truthful hyperbole. It's an innocent form of exaggeration — and a very effective form of promotion.

That is a lesson progressives have learned, if at all, only in the abstract. We sure are no damn good at actually *practicing* it. When was the last time you -- or I, for all that -- actually talked to a red-State, conservative-evangelical, born-again-Christian Trump supporter one-on-one in a friendly tone without inducing in them the suspicion that you were condescending to talk to them to ridicule their conservatism and / or their religious beliefs? Barack Obama was probably better at it than most of us, certainly better at it than I am. Remember the "beer summit" with President Obama, VP Biden, Prof. Gates, and the Cambridge cop who arrested him? Classic Obama. And yet even Mr. Obama once in a great while could be supercilious like the stereotypical New England liberal-elitist Harvard grad. Remember his remark, during an interview, about certain segments of voters ... *wink! wink!* ... being hung up (my term) on "God, guns, and gays" (his term)? And I have lost count of how often Bill Maher -- bless his heart ... I love the guy! -- has characterized Christianity as a belief in (Bill's term) "talking snakes". As much as I like Bill, I must say I agree wholeheartedly with Anthony Bourdain's revulsion at that tendency to stereotype-through-ridicule. We do that a lot, and I know all too personally well how hard a habit it is to break.

But we'd better break it. Either that or sign up for Pilate's classes in stiff-arm saluting and goose-stepping.

## Chapter 10 – An Autopsy on Frankenstein’s Monster

Now that (please color in *one* circle before reading farther)

O Hillary Clinton has won the election

O Donald J. Trump has won the election

O the election has been called off / postponed in favor of concentrating exclusively on the featured role of Anthony Weiner’s ... well ... **weiner** in the Phantastic Phantasmagorical Phallic Phestival surely still residing on the Abedin computer

now might be a good time, regardless of the outcome, to harken back to the early Neolithic period and recall the post-2012-election GOP “autopsy” consequent upon the Mitt “Don’t Need No Stinkin’ Concession Speech” Romney debacle. Even a Trump victory would only be the equivalent of a morbidly obese person eating a celery-stick lunch to prove he doesn’t need to lose weight. In that case, the Nation would still be bereft of an intelligent, effective, articulate opposition party, which it hasn’t had since at least Obama-McCain ... maybe even Bush-Kerry. So no matter who has won the election – which will certainly have been decided before this column is published – the Republican Party still needs an autopsy, an autopsy – we live in hope! – **they will actually pay attention to this time**, even if, flushed with victory, Trump-inebriated Republicans spend most of their time hunting for Muslims under everyone’s bed. So ...

### “Another body, Igor!”

The post-2012 autopsy makes it clear that, while the Republican Party is alive and well at the State and local levels, the core of the problem is Federal.

*The GOP today is a tale of two parties. One of them, the gubernatorial wing, is growing and successful. The other, the federal wing, is increasingly marginalizing itself ... [I]n the past six presidential elections, four have gone to the Democratic nominee, at an average yield of 327 electoral votes to 211 for the Republican. During the preceding two decades, from 1968 to 1988, Republicans won five out of six elections, averaging 417 electoral votes to Democrats' 113. ... At the federal level, much of what Republicans are doing is not working beyond the core constituencies that make up the Party.*

I would suggest that one of the more salient reasons Republicans lose so consistently at the Federal level – by no means the only reason, but certainly one of the more flagrantly conspicuous in terms of “optics” – is that the Republican leadership concentrates on policy, not people, tending to gloss over, assuming it even acknowledges the existence of, the effect those policies have on actual people. I recall one remark by Speaker Ryan, classic for its policy-over-people emphasis, about avoiding the danger that the safety net will become a “hammock” (Ryan’s word) for the indigent. At one point in the early 60s, my father was laid off during a downturn in the small-aircraft market – Dad worked for Beech Aircraft, now part of Raytheon, in Wichita, KS – and to keep our heads above the water, we had to move back to Arkansas, where both sides of the family could help us. Beyond Dad’s unemployment comp, we were never on **public** assistance, but even **family** assistance – something Republicans often

tout as a possible substitute for government largesse – was something we always viewed as a necessity to be **escaped from**, not one of Ryan’s hammocks to be **wallowed in**. *In order to be an effective opposition party, Republicans need to (re?)learn how to speak to people from the heart, not merely to speak to accountants from the head.* Of course, like all successful politicians at the Federal level – both Democrats and Republicans – Republicans tend to be wrapped in a cocoon of money difficult for people-oriented rhetoric to penetrate.

As part of a new “people” orientation, the Party must recognize, accept – dare I say, even celebrate – the “un-white-ing” of the Nation. (Here, there is some complementary work to be done by Democrats I will address in a moment.) The Trump campaign has demonstrated that Republicans can do a virtuoso job of understanding, articulating, and echoing back white anxieties about the so-called “browning” and secularization of America. But this emphasis needs to transcend concern with attitudes of Hispanic voters, legitimate as those are. This is a point that, if anything, the 2012 “autopsy” over-emphasized.

*If Hispanic Americans perceive that a GOP nominee or candidate does not want them in the United States (i.e. self-deportation), they will not pay attention to our next sentence. It does not matter what we say about education, jobs or the economy; if Hispanics think we do not want them here, they will close their ears to our policies. ... Too often Republican elected officials spoke about issues important to the Hispanic community using a tone that undermined the GOP brand within Hispanic communities.*

When I first read this, I kept thinking “Yes, but ... yes, but ... yes, but ...,” largely because, not only have Republicans, since 2012, **compounded** the problem with Hispanic voters by nominating a man who wants to build a wall to keep Mexican immigrants out and violate “due process” to deport the ones already here, but in the years since the “autopsy,” they have not responded, except with almost unanimous hostility, to voices like “Black Lives Matter” that protest fatal police shootings of innocent, sometimes even surrendering / complying, African-Americans. Whatever progress there has been in the GOP’s relationship with minority communities, it has been “progress backward”, not forward. **Condoning, however passively and by default, the killing of your opposition is hardly an effective strategy for reconciliation and electoral success, at any level, Federal or otherwise.** On this issue, perhaps more than any other, any effective GOP autopsy needs a “come-to-Jesus” moment to learn to value all lives, but most especially those the Party has so far worked especially hard to exclude and to disenfranchise. *I would suggest that one place to start would be the renunciation of the present de facto Republican practice of knee-jerkingly approving, under color of “law enforcement,” any action by any police officer under any circumstances.*

But, to be fair, Democrats have some corresponding work to do on their side of the electoral Continental Divide. I have been listening closely throughout this election season, and **I have yet to hear one single Democratic pundit or opinion-leader / -maker engage in any serious investigation or reflection of just what it is that makes Trump voters tick.** The almost universal tendency is to dismiss Trump voters as bib-all-wearing, tobacco-spitting, cousin-fornicating hillbillies who think the US is “a Christian country”. I say “almost” because the one, lone, solitary, and conspicuous exception to this willful ignorance is Michael Moore, who has spent time with refugees from the Rust Belt to understand Trump’s appeal – and who, *contra* Nate Silver & Co., as this is written, persists in predicting a Trump victory. (Actually, now that I pause to think about it, there is a second exception: a recent *New York Times* column by conservative David Brooks apologizing for what he now recognizes as a condescending attitude toward Trump voters.) I hope he was wrong. I pray to Great Cthulhu and the Great Old Ones he was wrong. But even if he turns out to be wrong, **he is / was asking the right**

**questions**, questions most liberal Democrats evidently considered beneath their dignity to even consider. Why? **Because he takes seriously the reasons Trump voters vote(d) as they do (did).** Trump voters are to the typical chardonnay-swilling, kale-eating Democrat what black and Hispanic folks are to country-club Republicans: a lower species of political life. *The greatest lesson for liberal Democrats of the Republican autopsy: everyone's story matters. Everyone's.*

I could go on forever. And by now, you probably think I already have. But there remains one point of the 2012 autopsy that is symptomatic of the dry rot currently eating at the foundations of the Republican Party, at all levels, not just the Federal. **The evidently endemic, DNA-encoded hostility to science that is characteristic of conservatives generally**, but that by now could be exclusively copyrighted by the GOP. I well recall, in the run-up to the 2008 election, an early GOP-candidates debate in which the moderator asked all the hopefuls lined up on stage to raise their hands if they **rejected** evolution. Best I recall, all hands went up. And, of course, in 2016, we all remember Dr. Carson's excoriation of the theories of the Big Bang and evolution as having been forged in the pits of Hell itself -- Carson being the same candidate who seriously theorized that the Egyptian Pyramids were built on Joseph's order to serve as great warehouses to store grain in preparation for the imminent Egyptian famine mentioned in Genesis. (Paradoxes abound: Carson is a brain surgeon!) If you search for references to science literacy in the 2012 autopsy, you will be disappointed. Such references occur in only two places: (1) a vague advocacy, in the 8th recommendation, of the establishment of an *RNC fellows program to recruit data, digital, and tech "fellows" from college campuses, targeting potential graduates in fields such as computer science and mathematics*; (2) the employment of more sophisticated statistical hardware and software to better track and predict voting patterns at successively finer levels of "granularity," an art whose practice both Obama presidential campaigns have dominated. Not a word about science education. Not a word about detaching the theory and practice of science from religious ideology. And the scientific evidence for global climate change? Yeah ... right ... that's funnier than Abbott, Costello, and "Who's On First"! Not a word about filtering out candidates whose abysmal ignorance of elementary reproductive biology leads them to assert publicly that women cannot become pregnant through rape. *And this is the Party that purports to be competent to reform the teaching of science through RNC fellows in the STEM disciplines.* My question: ***Don't you have to believe in science before you can teach it, let alone claim competence to reform the teaching thereof?***

I want the Republican Party -- or some future analogue thereof -- to succeed. I really do. The Nation needs an articulate, intelligent, informed, sophisticated, thoughtful opposition party for the sake of formulating alternatives. In the British parliamentary system, this is known as the Loyal Opposition. For perhaps 20 years -- and even that may be optimistic -- the United States has only had an Arguably Disloyal (remember the Senators' contrarian letter to the Iranian government?) Obstruction (remember the shutting-down of the government?). I believe it was the great Rabbi Hillel who remarked "If everyone pulled in the same direction, the world would tip over". So would the Nation.

Even if we, as I do, disagree with it most of the time, the Nation, for its own sake, needs a healthy Republican Party. I used to be a registered Republican. I hope the day comes when I can again consider that as a viable alternative. That would be a helluva lot easier than contemplating exhuming yet another grave.

## Chapter 11 – A Grimm *Non-Fairy Tale*

Sometimes I'm so brilliant, I terrify myself.

Gimme a few seconds to remove my tongue from my cheek and I will elaborate ... ah! ... there! ... much better! ... OK ... Onward ...

I have been following, off and on, the ongoing story about the young transgender Virginia man, Gavin Grimm, whose suit the Supreme Court recently refused to hear, remanding the case back to the lower court and essentially allowing to stand a decision prohibiting Mr. Grimm from using the men's restroom in his high school. It is important to understand that Mr. Grimm is, both anatomically and in terms of his manner of dress, male, in fact, indistinguishable outwardly from a young cisgender – I hope I use that term appropriately -- male. Anyone encountering Mr. Grimm in a men's restroom, who did not know the story of his hormone therapy, would not know or be able to discern that he is a transgender person ... any more than anyone unaware of Bruce Jenner's backstory would be aware that Caitlin was other than a young cisgender woman. This thundercloud is what spawned my lightning-bolt idea.

In support of transgender rights, I propose a Nation-wide campaign of civil disobedience on the part, not only of actual *transgender* people, but on the part of *cisgender* supporters of *transgender* rights. The people facilitating the campaign – which could well be the product of local real-time sourcing of flash-crowds convened by social media, tweets, SMSs, e-mails, Facebook texts ... whatever – decide on a set of restrooms, much preferably restrooms for **both** sexes simultaneously. The restroom locations are also broadcast by social media to all participants, who then converge on those locations, *after notice has likewise duly been broadcast to local media outlets that a group of transgender individuals are staging a demonstration* by using both the men's and women's restrooms at – this is only a hypothetical example – a Wal-Mart somewhere in Chapel Hill, NC, at 11:00 a.m. on Thursday, 23 March. (For obvious reasons, this would only have an impact in States whose laws regulate which birth-certificate gender can use which restrooms: you cannot commit civil **disobedience** by doing something **legal**.) Such adversarial gatherings could be called “pee-ins” or “crap-ins”. (I use the words “pee” and “crap” in preference to their more descriptive and colorful Anglo-Saxon synonyms because this is a “family column,” and also to demonstrate that, appearances notwithstanding, I do possess some rudimentary sense of “couth”.) Once participants are merrily watering and / or fertilizing the local landscape or decorative plants, mall security and / or local law enforcement could be called in, perhaps by the management of the affected businesses, to enforce the law. My question: how the **hay-yull** would they (law enforcement) go about doing that?

The pee- / crap-in in question, like all forms of civil disobedience and protest, should be accomplished *peacefully and with meticulous compliance with the “rules of the road”*. No littering with paper towels. No monopolization of bathroom fixtures: you do your business, wash your hands, discard the paper towels in the trash bin – then leave. No shouting matches – remember, this is all happening in a deeply red State – with hecklers. This is always a good idea as a general principle. So taught Jesus, Gandhi, and Dr. King. But aside from that, any verbal disrespect, and certainly any physical altercation, might well give law enforcement at least “reasonable suspicion,” perhaps even “probable cause,” to take actions to determine one's sexual-orientation status as to transgendered or not. And, most likely, being incarcerated in a red-State holding cell and branded by news report, rumor, and innuendo as either transgender or a friend of someone who is, might not be conspicuously conducive to one's

health. You would thereby inadvertently solve the how-to-enforce problem for the local transphobic powers themselves.

(These days -- though this hardly needs to be said -- it would also be a good idea to designate several people not taking direct part in the process as videographers who would record the entire proceeding on their cell phone cameras, then upload the images to the Cloud for safekeeping. Police lapel cams have an odd habit of ceasing to be reliable in such contentious circumstances, especially in red States.)

I say that because the point of all this would **not** be to get arrested, though that could be inconvenient. (I speak as someone who was arrested for throwing a rotten egg at Vice-President Spiro Agnew in 1973 -- I hit the sumbitch, too! -- which resulted in my background check for a Defense Department security clearance taking 3 months longer than it would have otherwise.) Rather, the whole point is to dramatize the **radical un-enforceability** of restroom-use laws based on someone's sexual status. (I say "status" instead of "orientation" because there is no relationship between someone being trans and being LGB.) At least, such laws are unenforceable as long as the Constitution, especially the 4<sup>th</sup> Amendment, is still on the books. (Important qualification: remember, this is now Trump's America!) No cop can walk up to you and say something like the old World-War-2 Nazi order "Show me your papers". Even stationing officers outside every restroom, public and private, in a State would not suffice, because the question itself is unconstitutional in the absence of at least "reasonable suspicion" (as in *Terry v. Ohio*). The point of recommending docility, apart from the general principle of non-violence, would be to **not** provide law enforcement with a pretext for what would essentially be a "Terry search" of one's sexuality.

Absent such a pretext, the law would be powerless -- and even the most *sieg-heil*-philic enforcers thereof would be powerless to enforce a law that is, for constitutional reasons, *un-enforceable in the first place*. The existence of bathroom-use laws tells us nothing about the incidence of sexual assault perpetrated by trans people -- basically, because the incidence of such is identically zero. (You would have an immensely greater reason to fear going into a restroom alone at night with a conservative evangelical-Christian Republican Senator -- say, Larry Craig -- than with a trans person about whom you know even less.) But, like the conservative Republican obsession with shoving probes up women's private parts, the preoccupation of red-State politicians with one's sexual orientation and history tells us much more about the conservative fetish over sex than it tells us about the sexual practices of those whose supposedly licentious behavior the laws seek to constrain. In many ways, matters sexual are to conservatives, especially conservative Christians, the literal embodiment of Rudolf Otto's definition of the Holy: *mysterium tremendum et fascinans* -- "the terrifying and attractive mystery". And for conservatives, the mystery of sex is all the more attractive precisely because it is terrifying -- and therefore perpetually an object of attempted control, be it by vaginal probes or bathroom-use laws. Anyone with even a working knowledge of Freud will recognize this tendency in the Republican Party for what it is: a massive collective instance of what Freud called "the return of the repressed".

I would write more, but it's early Thursday morning, and I'm getting tired. In fact, you might say I'm wiped out. (Yeah ... I know ... couldn't resist ... sorry!)



## Chapter 12 – On Flying with Guns

The late William F. Buckley once said “A conservative is a fellow who is standing athwart history yelling 'Stop!'” Buckley was a member of that generation of conservatives, along with Russell Kirk, James J. Kilpatrick, Jeanne Kirkpatrick, Mary Ann Glendon, and William Rusher – and very much **un**like so many of today’s conservatives -- who were thoughtful, learned, witty, urbane, and well-schooled in nuanced rhetoric. For that reason, I would recommend that leftists and progressives heed the wisdom in Buckley’s maxim, and, likewise yelling “Stop!”, similarly stand athwart their own almost-unanimous consensus about the supposed inconsistency in prohibiting people with suspected terrorist proclivities from boarding planes while nevertheless allowing them to purchase firearms. For the contradiction is only apparent, an apples-and-avocados comparison that obscures much more serious fundamental-rights issues that include, but go far beyond, the more obvious Second Amendment matters. Pretending that the two -- being an airline passenger and a gun owner -- are in any way comparable only trivializes both.

Like it or not, the Supreme Court, in the *DC vs. Heller* decision of 2008 and in the *McDonald vs. Chicago* decision of 2010, (a) ruled in the former opinion that the *individual* possession of firearms, for purely *individual* purposes like recreation and self-protection, is a **fundamental** constitutional right with no necessary and essential connection to any type of military service; and (b) in the latter that the Second-Amendment right at issue in (a) is, via the “equal protection” clause of Section 1 of the 14<sup>th</sup> Amendment, “incorporated” against the States, so that whatever the Federal government cannot do the States are likewise prohibited from doing. Together (a) and (b) have two immediate effects. Regarding (a), the term “fundamental right” has a fairly specific, even technical, meaning in constitutional law. Specifically, when a court – almost always the Supreme Court – recognizes any given right as “fundamental,” such a designation has two immediate effects. The first such consequence is that *designating a right “fundamental” means that **any** subsequent law proposing **any** abridgement of that right is subject to a “strict scrutiny” level of judicial review.* That is to say, the law proposing the abridgement or restriction is presumptively **un**constitutional: *the burden of proof is on the **government** to demonstrate that the proposed restriction is consistent with the US Constitution.* That is why, e.g., restrictions on the press and speech *based purely on content* are immediately suspect: proposals to limit the *content* of the speech are subject to strict scrutiny. (Speech restrictions are often justified for reasons other than content, e.g., volume of loudspeakers, regulating traffic flow around parades, speakers’ lists at school-board meetings, etc.) Hence Westboro Baptist signs reading “God Hates Gays” are protected by the “abridgement” clause of the First Amendment. Intuitively, you might think of proposed restrictions on fundamental rights as being “guilty until proven innocent”.

The second consequence of recognizing a given right as “fundamental” is that, in general, in order for any fundamental-right restriction to be permissible, the government must do two things: (1) demonstrate that it has a “compelling interest” in imposing a restriction, and that (2) the government is using the “least restrictive means” to implement this restriction. To cite a recent example, these two criteria were the core of religious objections to the contraceptive mandate in the Affordable Care Act. The government argued convincingly that the Nation has a “compelling interest” in ensuring the ready availability of contraceptive devices and substances to female employees of private companies – religious organizations excepted – and so satisfied “compelling interest” criterion of (1). But it ran afoul of the “least restrictive means” criterion of (2) because – so the argument was made by the Green family in, e.g., the Hobby Lobby case – to make contraceptives available to employees under the

company's group insurance plan would violate the personal "pro-life" religious beliefs of the owners, since some of the approved contraceptives were allegedly abortifacients. (The "free exercise" clause of the First Amendment has long been recognized as a fundamental right.) In other words, the *means* for accomplishing the availability of contraceptives was **insufficiently** restrictive. The practical consequence of restricting fundamental rights via (1) and (2) is that – with a sparse handful of exceptions – the overall requirement of "strict scrutiny" judicial review means that most fundamental-rights restrictions are ruled unconstitutional.

By contrast, being a passenger on a commercial aircraft is not a right, fundamental or statutory. Rather, **being an airline passenger is much more like driving: a privilege, not a right.** To be sure, as the old Southwest Airlines TV commercial used to say, one is "free to get up and move about the country", a "liberty interest" inscribed in the "due process" clause of the Fifth Amendment. But there is no such thing as any right to board a commercial airliner, least of all a right hallowed by anything comparable to *Heller* and *McDonald*. (I suppose I should say that there are quite serious "due process" questions about the "no-fly" list. But getting one's name added to the "no-fly" list is an action by the government that occurs considerably "upstream" from actually boarding a plane, and there are serious questions regarding the constitutionality of such a list. Remarkably, the ACLU, Fox News, and the Federalist Society all concur in questioning the legitimacy of the "no-fly" list. But the constitutionality of the "no-fly" list is a whole separate rant *du jour*.) I continue to be a die-hard adherent of the late Chief Justice Burger's interpretation of the Second Amendment. But, agree or disagree, the Court has spoken, and I also agree with former Chief Justice John Marshall in *Marbury v. Madison*: "It is emphatically the province and duty of the Judicial Department [the judicial branch] to say what the law is." Unless and until a subsequent Court reverses *Heller*, the Second Amendment grants a fundamental right to *individual* gun ownership. It is the Court's ruling, not my lack of concurrence, that is decisive. Period.

**In my opinion, and speaking only for myself, that is entirely as it should be. No argument.**

But now consider the **recently designated fundamental right to individual gun purchase and ownership** under the post-*Heller* / -*McDonald* understanding of the Second Amendment. First, let's ask whether in general it is ever, under any circumstances, permissible to restrict or to abridge any fundamental right. The answer is "Yes, of course". Fundamental rights are as subject to restriction as any other rights. One has a fundamental "free exercise" right for religious observance, but if one's religion mandates infant sacrifice, this practice will not be permitted. With respect to gun rights in particular, individuals with a felony conviction are usually not permitted to own a gun. Likewise individuals who have been arrested, are under indictment, and awaiting trial. But in those cases, the judicial system and law enforcement have **already** gathered evidence, have **already** issued warrants based thereon, have **already** arrested the suspect, may even have **already** tried and convicted and imprisoned the accused. The individual has **already** been given the full measure of constitutional protections guaranteed by, e.g., the Fourth, Fifth, Sixth, and Eighth Amendments. *But what about earlier in this process?* In fact, what about in the earliest stages? Are fundamental rights subject to any form of abridgement or restriction at the very beginning before the wheels of the judicial machine have completed even a quarter-turn? The answer here is, not categorically "Yes," but "Yes, **provided** ... " in light of what is probably the classic 1968 case of *Terry v. Ohio*. The "provided" is critically important.

At issue in *Terry* was the constitutionality of allowing a police officer who had stopped Mr. Terry to briefly detain Mr. Terry long enough to perform a light outer-garment search, based on the detaining officer's "reasonable suspicion" that Mr. Terry and his partner were in the process of preparing to commit a crime. Clearly, for the brief duration of the search, one could argue, as Mr. Terry argued, that his fundamental Fourth Amendment right to be free of unreasonable searches was being violated, given that the officer based both the detention and the subsequent search on "reasonable suspicion" instead of even "probable cause" and least of all on hard, tangible evidence. The case was appealed all the way to the Supreme Court, which ruled that, yes, detaining Mr. Terry *briefly* on the basis of "reasonable suspicion" – the Court's term – was constitutional, and therefore not violative of the Fourth Amendment's prohibition of "unreasonable" search, given that the detaining officer justified his actions, not with reference to some subjective and non-articulable "hunch" or "feeling," but on the basis of his considered judgment and professional experience in law enforcement, coupled with his empirical observation of the conduct and deportment of the plaintiff. **However, the Court also added that such detentions and searches – now referred to colloquially as "Terry searches" – must be of very limited duration** ... and certainly may never be indefinitely prolonged in anticipation of what *might* at some point be found on a protracted "fishing expedition". The duration of the abridgement of a Fourth Amendment right must vary proportionately with the substantiveness of the justifying cause.

This principle is obviously applicable to the case of the suspected terrorist sympathizer who wants to buy a firearm. **In both cases – dealing with a suspicious individual and dealing with a suspected terrorist – we are addressing a fundamental right: the fundamental "liberty interest" in being free of unreasonable searches, and the fundamental right to gun ownership.** As different as the cases are in other ways, they both are the same in posing a common question: **how much of a restriction of a fundamental right is justified, based on the substantiveness of the suspicion?** In both cases, there is also an implicit time element. If the officer had detained Mr. Terry and, during the brief period of detention, discovered that Mr. Terry was under indictment in, say, three States for armed robbery, had two strikes against him already for same, and was concealing a locked-and-loaded Glock-9 in his waistband, Mr. Terry would presumably have been subject to outright arrest – all of which might well be determined within the narrow window of the detainment. But as a matter of practical fact, dealing with suspected terrorists or terrorist "wannabes" who want to buy guns might well be much different. Remember how long it took the CIA to run to ground UBL's messenger, Abu Ahmed al-Kuwaiti. Suppose al-Kuwaiti had been an American national – like, let's say, Omar Mateen, who was born in Queens – except equally elusive. Would it be constitutionally permissible for an *American* version of al-Kuwaiti to be denied permission to purchase a gun for the months and years it took to locate and to positively identify the real-life al-Kuwaiti? Would the "*Terry* search" guideline of **brief** detention permit an **indefinite** prohibition on gun purchase? E.g., the Cornyn amendment to one of the four recently failed gun-control bills specified a three-day interdiction on a gun purchase. I suspect this would be consistent with *Terry*, but would it be long enough to substantiate a "reasonable suspicion" of terrorist connections? I don't know, but I would venture to say "No". Again, I don't know, but I strongly suspect that our hypothetical incipient terrorist, perhaps after a brief *pro forma* inquiry, would be permitted to buy the gun.

Bottom line: it seems to me that, if we are square-jawed and at-all-costs determined to keep weapons out of the hands of suspected -- **one more time: not convicted, but suspected** -- terrorists, we would have to be prepared to set an important precedent of *abridging a fundamental right indefinitely on only the basis of "reasonable suspicion,"* until "reasonable suspicion" could mature and ripen, assuming it ever did, into actual "probable cause" substantive enough to justify an actual warrant and

an arrest. And, as in the case of al-Kuwaiti, that could take weeks ... months ... years. As I said “indefinitely”. Using “reasonable suspicion” as a tool to interdict terrorism would mean something like *Terry v. Ohio*, except on steroids. In practice, this would amount to a *de facto* repeal of the “unreasonable search and seizure” clause of the Fourth Amendment.

So what would be wrong with that?

**Everything.** Consider:

o Local law enforcement has a “reasonable suspicion” that your church, which has a longstanding tradition of being involved as an advocate for undocumented immigrants, is, in fact, functioning as a stop on a clandestine underground railroad facilitating illegal border crossings. **Based only on nothing more substantive than “reasonable suspicion,”** would the government be justified in closing down your church *for an indefinite period of time* – weeks or months – to pursue evidence sufficient to turn “reasonable suspicion” into “probable cause” for the arrest, indictment, and prosecution of church officers and ministers?

o For the last several months, I have written multiple columns severely critical of the candidacy of Donald J. Trump and a Republican Party that is apparently capable of gestating such a grotesque moral and political deformity. If my columns ever prompted a level of criticism sufficient to engender “reasonable suspicion” that I intend harm to Mr. Trump or his supporters, could the government -- **only on the basis of “reasonable suspicion” and with no “probable cause”** – subject me to a gag order or detain me *for some indefinite period of time*? (There are nuances here I am glossing over for the sake of brevity, e.g., I am assuming that my writings stayed well clear of actual and explicit incitement to harm, which is not protected speech under the First Amendment. It is not always clear where this line is.)

With regard to the specific issue of a suspected terrorist or terrorist sympathizer buying a gun, the critical question, it seems to me, is this: given that one can cite *Terry* as precedent for interdicting a fundamental right, in this case, gun ownership, for some very limited period of time -- think in terms of a few hours, or (per the Cornyn amendment) at most a few days -- based only on “reasonable suspicion,” *could we reasonably expect to uncover the real motivations of the terrorist suspect within the time limits imposed by something like a “Terry search”*? If not, would we be willing to extend the justification for the abridgement of fundamental rights on the basis of “reasonable suspicion” **so as to give precedence to the interdiction of terrorism, and not, as now, the protection of individual rights**? And if the answer to that question is “No,” and if we still insist that “reasonable suspicion” can justify only transient, limited, and *ad hoc* restrictions on fundamental rights, then -- remembering how long it took to bring al-Kuwaiti to the surface -- the relevant question becomes “Why bother?”

Prohibiting gun ownership on the basis of “reasonable suspicion” while nevertheless respecting the time restrictions of a “*Terry* search” would probably give us the *illusion* that we are “doing something” about terrorism, just as New York’s former “stop and frisk” searches -- which were often **not** true “*Terry* searches,” but keyed on skin color and socio-economics -- gave the illusion of “fighting crime”: the transient shot of testosterone might make us feel good, but that would be about all. The alternative would be to begin to dismantle the Fourth Amendment one piece at a time, already dangerously undermined by, e.g., *Utah v. Strieff*, and, because the unintended consequences of doing

so would extend far beyond Second Amendment issues, that would be a classical case of the "cure" being worse than the disease.

## Chapter 13 – “Prisoners of Own Device” ... Trump and the Mueller Inquiry

I believe the greatest rock song ever written is The Eagles' "Hotel California". I have believed this for some time, and for a variety of reasons. But I have come to believe it even more recently, because "Hotel California" is turning out to be the anthem of any nation -- at this time, the United States -- which allows itself to be seduced into tyranny by the meretricious charms of simplistic solutions to problems which, though genuine enough, may be used to further the demagoguery of people whose only loyalty is to their own power. Our fear and perplexity are their strength. The latest highway signpost pointing the way to our Nation's Hotel California is the 20-page memorandum arguing that the President is a law unto himself. We can hear the music and read the lyrics even now.

*On a dark desert highway, cool wind in my hair  
Warm smell of colitas, rising up through the air  
Up ahead in the distance, I saw a shimmering light  
My head grew heavy and my sight grew dim*

**The following is a prophecy.** I hope I am wrong. But I do not think I am.

*Step 1: Trump will decline to volunteer to be interviewed by Special Counsel Robert S. Mueller and his co-investigators in the Office of Special Counsel about Russian influence in the last presidential campaign.*

Speaking as an “avocational constitutionalist,” i.e., someone who has studied the Constitution seriously and in depth, read it closely, read commentaries on it, read theories about how to interpret it, written about it, and taken courses about it, I believe that the President has the power to decline to *volunteer* to be interviewed by any member of the Executive Branch. Donald Trump, like any other citizen, has the “Nancy Reagan Option”: Just Say No.

*Step 2: Special Counsel Mueller, whose office has full subpoena power, will issue a subpoena that is intended to force Donald Trump to be interviewed by the Office of Special Counsel.*

Again, there is no question whether the Office of Special Counsel has subpoena authority. So any subpoena issued at the behest of Mr. Mueller is accompanied by the same authority as any subpoena issued by any office or individual endowed with such vested power. So there is no question as to the legitimacy of the subpoena thus issued. But it is at this point – the undoubted legitimacy of the legality of the issuance of the subpoena accompanied by Trump’s reluctance to comply with same – that holds the potential for a constitutional crisis – and, I would argue, consequences immeasurably more serious – of a gravity not seen since the run-up to the Civil War.

*Step 3: Trump will refuse to comply with the subpoena, whereupon the issue devolves to the Supreme Court.*

Now, to be fair, there is a genuine issue – at least in my mind, and speaking only for myself – as to the constitutionality of a sitting President being *required* to answer to a subpoena. Frankly, I can argue both sides of the issue, the “Yes” side and the “No” side. The operative word in the foregoing is “sitting”.



A President who is impeached, and who is subsequently convicted becomes a **private citizen**, and, as a private citizen, he or she is no more immune from answering a subpoena than you or I. This has never happened before in the Nation's history, the closest approach being the impeachment of President Andrew Johnson in 1868, whose conviction by the Senate failed by a single vote. Nor, once leaving office, is any former President immune from the legal penalties incurred by refusing to comply. (The word "subpoena", translated literally from the Latin, literally means "under [pain of] punishment".) One could argue, however, that President Nixon, who refused to produce what later came to be known as the "Watergate Tapes," was ordered by the Supreme Court to produce the tapes, and that executive privilege did **not** extend to the withholding of physical evidence, *which could not be obtained in any other manner*. What is at stake in this case is the ability of the President to function as President under the terms of Article II of the US Constitution. In the interest of the Nation as a whole, even criminal action – so this argument goes – must be subordinate to the functioning of the Office of President.

So the key question -- it seems to me, and, again, speaking only for myself -- is whether the information required by the Office of Special Counsel, can be obtained *in any manner short of a personal, face-to-face questioning of the President*. This is where the jurisprudential bubble gun gets sticky, certainly for the President's legal team.

Over the year-plus since the inception of the Mueller investigation, how many versions has Donald Trump issued of his reasons for taking various actions relevant to the Mueller inquiry? To cite only a single example, at one point Trump said that he fired former FBI Director James Comey for his highly unprofessional conduct in announcing the renewal of the Hillary Clinton e-mail investigation. (I agree with Trump's assessment as to Mr. Comey's professional conduct in this matter: even people of exceptional integrity, as I would still characterize James Comey, sometimes succumb to bad judgment.) But a few days later, in response to a question by NBC's Lester Holt, Trump said that he fired Mr. Comey in order to shut down the Russia investigation. (Granted, the firing of then-Director Comey for his handling of the Clinton e-mails and the stopping of the Russia inquiry are not contradictory reasons. But if each reason is to be given its proper weight in answer to those respective questions, then *why not allude to both reasons* in both interviews? Why did the Comey matter suddenly sink *below* the threshold of visibility in the Holt interview? And why did Mr. Comey's professional conduct not rise *above* that threshold in the matter of the Clinton e-mails?) Which story are we to believe? (Ironically, Rudolf Giuliani recently cited such inconsistencies as a reason to **not** interview Trump!) Must I really in addition allude to Trump's waffling on whether or not he knew about the \$130 thousand hush-money payment to Stormy Daniels? Then there is the "No he's not my lawyer / Oh yes he is" assessment of his relationship with Michael Cohen. *Ad nauseum et ad infinitum*. Moreover, all these contradictory statements occurred in public – in fact, in front of members of the media – **on occasions when Trump was not under oath**. Now, I am no one's idea of a lawyer, nor do I presume to be. But I am a pretty damn good logician, certainly more than good enough to know that the statement "P and not-P" is a contradiction.

So, even as just an educated lay person with a more-than-merely-casual interest in the Constitution, if I were Trump's attorney, I would quail with terror at the prospect of my client being interviewed **under oath** by the Special Counsel and my client responding to Mueller's questions with his trademark free-wheeling, stream-of-consciousness, on-the-fly, logic-free, real-time *ad lib* remodeling of history, which is apparently Trump's default mode or discourse, even part of the Trump brand. On literally anything. (Remember "See Melania through the window"? Remember "Yes I've read the North Korea



letter / No I haven't read the North Korea letter"?) Now, granted, it is perhaps on the outermost fringes of possibility that Trump, with intense coaching by his legal team, might collaborate with them to formulate a more-or-less consistent and perjury-proof account of Trump's behavior, both during the campaign and after assuming the Presidency. And – even more important – that Trump would strictly stick to this story during questioning. Yeah. Perhaps. Maybe. But even then, there would remain the potentially catastrophic problem of how Trump would answer questions *in real time* from the Mueller team as to *reconciling this consistent version of Trump's story with subsequent public utterances contradicting same*. E.g., if Trump did indeed fire Mr. Comey for unprofessional conduct regarding the Clinton e-mails, how is such a characterization to be reconciled with the statement to Lester Holt about shutting down the Russia inquiry? Lipstick on the collar and an empty condom package in the wallet are irreconcilable with the husband's statement to his wife "Oh ... she and I are just professional colleagues".

*Step 4: The following is a flat prediction – Trump will refuse to comply with any subpoena from the Office of Special Counsel.*

At that point, the matter will, I predict, be decided by the Supreme Court. Must a sitting President comply with a subpoena? Or may he legally demur? I would further predict a very close vote, but that the Supreme Court would decide in the negative: no, a sitting President need not comply with a subpoena. **Please understand: that is the best result we can hope for.**

*The worst-possible result would be a "Yes" decision by the Supreme Court: yes, the President must comply with the subpoena, and for reasons analogous to the reasons cited by the Court in the matter of the Watergate / Nixon tapes. That is to say, there is no other way for the Office of Special Counsel to ascertain the answers to the relevant questions. In the event of a "Yes, comply" vote by the Court, it would be elegantly ironic that -- this is me talking now -- one of the most salient justifications for such a "Yes, comply" decision would be the word-salad of contradictions Trump himself tossed in response to other Mueller-related questions, a bare few of which I enumerated above: a masterpiece of smoke-and-mirrors obfuscation, gaslighting, misdirection, and just plain lying that has left the entire issue hopelessly confused, absent a one-on-one conversation between Trump and the Office of Special Counsel. Consequently, if Mr. Mueller & Co. are to have any hope of ferreting out the diamond from underneath the gigatons of bullshit, common sense alone dictates that they must be allowed into the cattle feedlot.*

My final prediction:

*Step 5: Trump will elect to defy any "Yes comply" decision by the Supreme Court.*

In this case, Trump adopts the strategy allegedly -- and probably apocryphally -- followed by President Andrew Jackson in 1832 in response to the *Worcester v. Georgia* holding of the Marshall Court: "Mr. Marshall has made his decision, now let him enforce it". But unlike the *Worcester* decision, this is not a States' rights issue. This is strictly a matter within the confines of the Executive Branch. So Trump's defiance of a subpoena would precipitate a constitutional crisis of unprecedented scale. I fully understand that saying a decision in Trump's favor is the best result we can hope for is highly counterintuitive. One would think that a Supreme Court ruling mandating that the President comply with the Special Counsel's subpoena would be the supreme desideratum. To understand why I disagree, read Part 2 next week. For now, kindly suspend disbelief.

What would be the consequences of such a "Yes comply" decision? The short answer is "Nothing good". But as to the details, here prediction must yield to speculation. See Part 2 next week.

*I had to stop for the night  
There she stood in the doorway;  
I heard the mission bell  
And I was thinking to myself,*

*'This could be Heaven or this could be Hell'*

## Chapter 14 – The Incipient Fascism of Monotheistic Religion

In last week's "Skeptic's Collection" column, I started out discussing the multiple reasons that monotheistic religion is fundamentally inconsistent with the most basic tenets of any free society founded on and governed by principles derived from the European Enlightenment. I ended up, in the last couple paragraphs – and against my initial intent – discussing Donald Trump and the similarities between Trump and any monotheistic god. As I said at the time and said just now, that was not my original intent, which in the beginning was to just discuss the conflict between monotheistic religion and liberal (in the classical Enlightenment sense) societies. But, upon reflection, I discovered that this is an area where the tail really should wag the dog: the dog idea of conflict between monotheism and liberal politics should have been wagged by the tail of the idea of Trump-as-god. So I decided to elaborate on my concluding thesis that support of and enthusiasm for Trump actually does constitute a *de facto*, fundamentalist, evangelical religious cult – which I will call "Trump-ianity" – and is a political movement only in an important, but strictly secondary sense. There are three justifying reasons.

**o Trump-as-god is not just a slogan or even an abstract principle. Trump-ianity is, like any religion, especially any monotheism, an entire and comprehensive world-view**

It is what in German is called a *Weltansicht* or *Weltanschauung*, i.e., an all-encompassing ideology that – yes, to be sure – does *include* politics, but that *transcends mere* politics to encompass a view of history, morality, economics, religion, and even ecology. Properly understood, Trump-ianity assumes cosmic dimensions. Herewith some examples:

-- *The world is a mess*

The world has always been a dangerous and uncertain place. Hence politics. But according to "Trump-ianity", the world is especially dangerous because, uniquely among all nations in recorded history, the United States is the target, the victim-in-view, and frankly the "mega-meal-ticket" of other nations less fortunate. The nations that seek to impose perpetual victim-hood on the United States include ... well ... just about everyone, even our presumptive NATO allies, who expect the United States to shoulder a disproportionate share of defense costs. (What always goes carefully unremarked is that, in defending NATO, **the US is acting in its own enlightened self interest** – it would not be in that self-interest to see Russian tanks rolling through the Fulda Gap on their way to the western coast of the Iberian Peninsula – so defending Europe is **a by-product of defending the US**, not something the US undertakes to do for the NATO nations from motives of sheer, disinterested altruism. When Charles DeGaulle said in 1967 "France has no friends, only interests", he was speaking of all nations, not just France.) Similar remarks apply about various environmental accords concerning, e.g., climate change: air and water pollution do not stop at the US border.

-- *The only way to deal with the world being is a mess is to have a strong, preferably authoritarian, ruler at the helm of American policy – a fuehrer, if you will – who, brooking no opposition or even criticism, will guide the Nation with an iron will, a latter-day Bismarck or Frederick the Great*

This means that all potential opposition, even from the Nation's own free press, must be dealt with through stonewalling, evasion, and out-and-out lies – rather as Plato, in the Republic, said that philosopher-kings ("guardians") were authorized to lie for the good of the regime – and, ideally, by

suing persistently obstreperous media out of business by “opening up the libel laws” – of which there is no Federal version ... but never mind that. Remember, Trump-ianity insists that Trump is god.

If you are interested in the other implications of the *de facto* religion of Trump-ianity, see my 27 April column on “One Big Guy”.

To be sure, Trump-ianity is not a single-issue religion. It incorporates several tenets that virtually all people of good will can agree on, e.g., equitable treatment for American workers in international trade agreements, for example. (Of course, historical memes also say that the architects of the Terror in France in 1789 got the hookers off the streets of Paris, and that Mussolini made the trains of Italy run on time.) But, again, like virtually all religions – but most especially monotheistic religions – in addition to these common-sense teachings, Trump-ianity goes "a bridge too far" by incorporating as requirements for membership a veritable zoo of “metaphysical” principles that have nothing to do with those essential beliefs. What does the size of the Inauguration Day crowds have to do with justice for American workers? How does drilling on National Monument land help the environment? What do his maunderings about Andrew Jackson and the Civil War have to do with, e.g., global warming? (Oops! I almost forgot! Global warming, of course, is a Chinese hoax dating back several million years, perhaps before China was even inhabited. My bad!) Christianity teaches care for the poor, but what does that have to do with *homoousios* vs. *homoiousios*? With Trump-ianity as with other monotheistic faiths, by the time you do reach whatever Jewel may be in the Lotus, you wonder if it was really worth all that digging.

### **o Imperviousness to facts, data, and rational / "evidence-centric" argument**

Now, in fairness to religious people, even in fairness to all monotheists, **this is not true universally**. I am personally acquainted with many religious people, even sanely conservative monotheists, who do place critical value on evidence and rational argument. But it is certainly true, almost by definition, of *fundamentalist* religious cults. At any rate, it is certainly true of Trump-ianity. For example, many Trump supporters are convinced that there were indeed thousands of Muslims in New Jersey cheering when they saw the World Trade Center towers collapse on 9/11, that there were unprecedented numbers of people thronging the Mall to watch the Inauguration ceremony, and, despite the exhaustively corroborated evidence gathered by no fewer than 16 American “three-letter” intelligence agencies, remain stoically upersuaded of Russian interference with the last election. Many Trump supporters within the coal-mining community, what little is left of it, probably do sincerely believe that Trump can restore coal-mining employment to its halcyon days of the 40s and 50s, despite gains made by renewable and clean energy sources. I predict that most of them will be as “un-disappointable” as the folks who expect Jesus to return a week from next Tuesday, and, when that fails to occur, busy themselves calculating the **next** potential Return date.

Granted, not all communicants of Trump-ianity are concerned with equal passion about all those issues. Most likely, unemployed coal miners in West Virginia are more concerned about coal-mining jobs than about cheering Muslims in New Jersey. But however the enthusiasm is distributed among issues, those thus enthused usually have in common a contempt for people who do cite facts and evidence against Trump’s claims, and who do argue rationally on that basis. (I mean people who cite statistics like the following: there are about 20,000 professional dancers and choreographers in the US, as compared with fewer than 16,000 coal miners, in the sense of people who physically work in a mine to dig out the coal.) The curious consequence is that **rational, “evidence-centric” argument**

**actually renders such arguments less credible**, because the person doing the arguing is instantly branded a “libtard”, an Obama / Hillary Democrat who savors a fine chardonnay while listening to the screams of babies being partial-birth aborted while reading gay porn by the light of burning American flags, and is thus discredited in advance. Hence the echo chamber. Hence the bubble. As Sinclair Lewis said in *I, Candidate for Governor*, "It is difficult to get a man to understand something, when his salary depends upon his not understanding it!" Of course, liberals, Democrats, and progressives are susceptible to the same tendency, but folks like that, i.e., like me, have no current candidate for *de facto* god-hood. (No, not even Bernie.) Besides, there are more atheist / agnostic Democrats / liberals / progressives than Republicans, anyway.

This echo-chamber / bubble effect is in no way essentially different from the same kind of echo chamber / bubble I have encountered over the years – decades really, though I finally got smart and gave up – trying to debate, e.g., issues like evolution, the Big Bang, and gay marriage with fundamentalist Christians. I have had almost identical experiences debating politics with Trump supporters. The words are different, but the music is exactly the same.

**o A radical insistence that the object of reverence at the center of the cult -- God, in the case of Christian fundamentalists; Trump, in the case of Trump supporters -- is utterly without blame or censure for any and all abuses whatsoever**

This is Teflon, considered as a foundational theological / theodical principle: nothing sticks. We see this principle in action, when, e.g., Trump mocked Serge Kovalski, the *New York Times* reporter with the serious physical challenge of controlling his movements. Ditto his remarks condoning sexual assault on women. Nothing sticks. The same pattern repeats in conventional, mainstream religion -- I mean denominational religion in the strictly lexical sense now -- when churches remain thronged even after multiple scandals have broken regarding pedophilia by clergy. The question that one would think should occur to all is "What precisely is the character of a God Who would call to the ministry men who would prey on kids?" Never mind the sick clergy. What about the God they serve? But -- again - - this is the question that never gets asked, the dog that never barks. Nothing sticks. Trump-ianity shares in this common -- and, I will insist, willful -- moral obtuseness of all fundamentalist religious cults. I addressed this issue, in both the Church and politics, in my "Skeptic's Collection" column on the "One Big Guy" phenomenon.

The danger implicit in Trump enthusiasm being a *de facto* religion should be obvious to anyone who has even cursorily studied the history of religious conflict on the Continent of Europe in the 16th and 17th centuries, or in the case of the Catholic-Protestant animosity that has stained the history of Ireland in the 20th. Ditto the various *de facto* political faiths that contended so bloodily in the streets of Berlin, Munich, and Nuremberg during the Weimar era. When there is no common basis for conversation, when there is no agreement as to methodology or even fact-hood, the common ground we rely on to restrain and hopefully settle disputes is eroded away like glaciers on a warming planet. Under those conditions, when we are more prone to talk **at**, rather than **to**, one another, Chairman Mao Zedong's famous maxim becomes ominously relevant: "Political power grows out of the barrel of a gun".

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