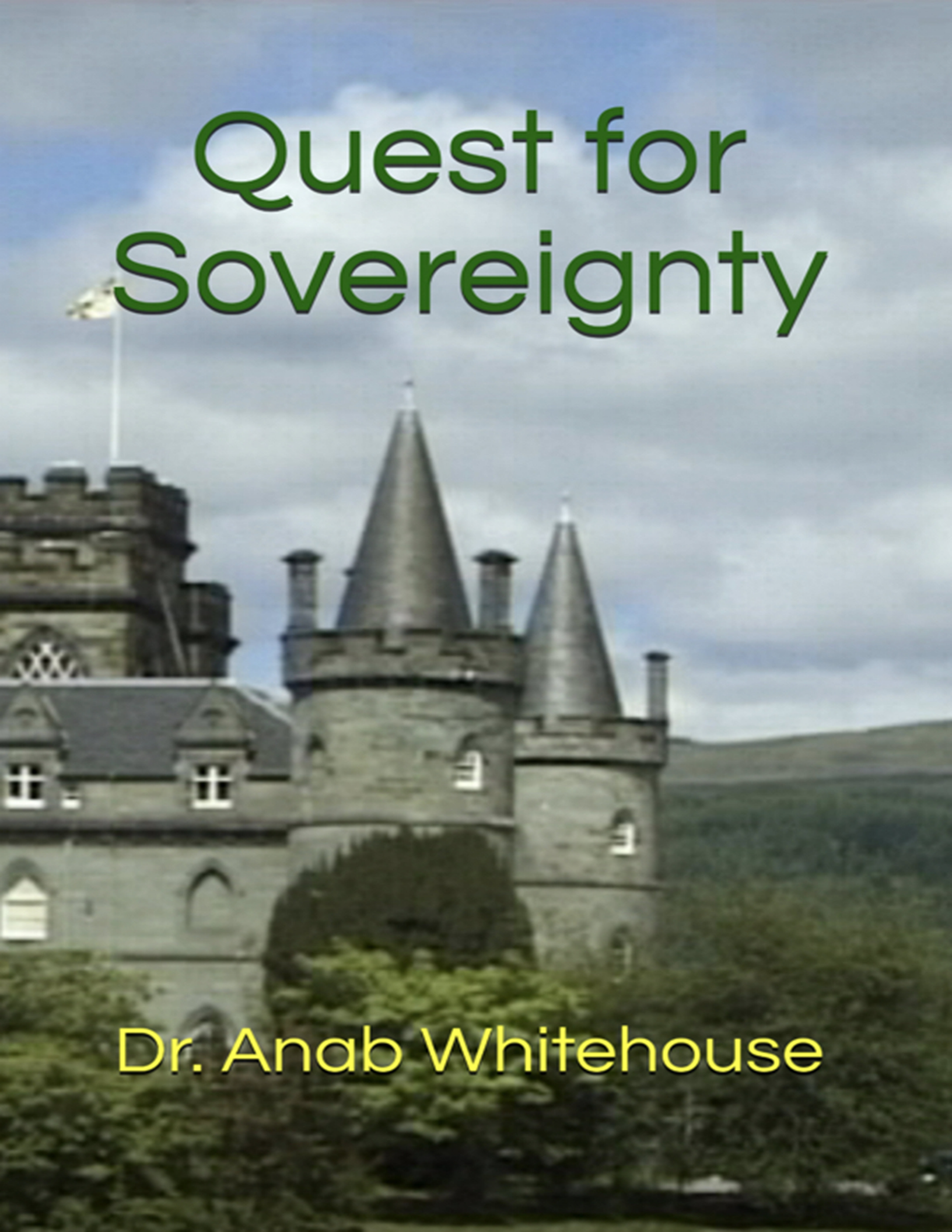
Quest for
Sovereignty
Dr. Anab Whitehouse

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“All through school and University I had been given maps of life and knowledge on which there was hardly a trace of many of the things that I most cared about … until I ceased to suspect the sanity of my perceptions and began, instead, to suspect the soundness of the maps.” – E.F. Schumacher

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Foreword

Before delving into the problem of sovereignty as viewed through the lenses of the various chapters to which this book gives expression, I felt that some sort of discussion should be provided to help place some – if not all -- of what follows in a more personal context. Without wishing to get bogged down in the minutiae of autobiography, I felt that offering an overview, of sorts, concerning certain aspects of my life might provide a reader with some degree of insight into how I came to find myself drawn to the issue of sovereignty.

Any number of thematic choices might be used to accomplish the aforementioned overview. Nonetheless, I have decided to focus on different dimensions of my educational experience in order to provide a certain amount of background for the reader with respect to the critical explorations that take place during various chapters of the present volume.

On the surface, the following commentary concerning various facets of my life as an inmate in the schooling process might seem to have little, or nothing, to do with the issue of sovereignty. However, I believe that schooling and sovereignty are often locked in mortal combat with one another quite irrespective of whether the people (students, teachers, and administrators) engaged in that war are aware of what is actually taking place.

The following excerpts might help to provide an array of concrete examples with respect to some of the ways in which schooling plays a counterproductive, if not antagonistic, role in conjunction with sovereignty. I have a feeling that some of my schooling experiences will resonate with an array of schooling experiences that have been undergone by a lot of other individuals.

The grammar school that I attended was not an institution that could be labeled – at least in any overt sense – a troubled school. Although it was not an establishment for the children of the well-to-do (or even for the offspring of less affluent cousins), there were no: Gangs, or drug-related activity, or much, if anything, in the way of bullying that took place in that school.

It was a two-storey, wood-framed building of very modest size. Some 60 years later, when I visited my former hometown with my wife, I discovered that the institution had been razed to the ground quite a few decades ago.

I remember very little of the time I spent in that school. There are just snippets and isolated snapshots that remain in memory.

For example, there is a very fuzzy sense within me of having cried inconsolably when my mother dropped me off at kindergarten for the first time. Perhaps this is a confabulation based on what my mother later said concerning the apparently traumatic character of the initial, if temporary, transfer of control from home to school that occurred in relation to me.

With the exception of a few fleeting images of cutting paper and spreading a white paste, by means of a paint brush, in order to stick paper cuttings together, there is only one clear impression that has stayed with me about doing hard time in kindergarten. This impression involved receiving graham crackers and milk before being forced to lie down with all the other kids in a darkened classroom.

I tended to resist the exercise and was restless throughout its duration. I'm sure I got a flunking grade on my report card for my inability to comply with the program.

I have vague recollections of an art teacher who used to visit my school from time to time when I was in kindergarten and/or the first grade. As far as I am able to recall – which is not very far -- she seemed to be very talented … but, then since, at the time, I had a hard time coloring within designated lines, almost anyone might appear to be talented to an artistic miscreant such as myself.

Penmanship was another of the subjects through which I underwhelmed the world. The handing out of white sheets of paper that had been provided with a number of lined spaces suitable for practicing the formation of the letters of the alphabet were like instruments of torture for me … and I dreaded their arrival.

After all, since I had difficulty coloring within the lines, one might anticipate that filling up lined spaces with perfectly proportioned letters – or reasonable facsimiles thereof -- might also fall beyond my capabilities at that time. Perhaps, I was precociously working my way

toward perfecting the terrible handwriting that often is associated with advanced degrees.

Throughout my days of attending public school – both grammar as well as high school -- I walked to class (about a half mile in each case respectively). One of the few things I remember about this aspect of my life is that, for the most part, I seemed to do it alone – at least this appeared to be the case from the first grade onward – and, in addition, I pretty much was always the last person to enter the building before – and, occasionally after -- the final bell rang marking the beginning of any given school day or session.

I don't recall ever eating school cafeteria food. I either browned-bag it or walked home, and, then, back again, in the time allotted for the lunch break.

At some point during grammar school – perhaps around the 2nd or 3rd grade -- a dentist, plus an assistant or two, descended on the school and applied fluoride treatments to the teeth of the students. I don't recall asking for this to be done, but, then, there were a lot of things associated with school for which I didn't ask, and, yet, I got to experience the fruits of those sorts of impositions.

About half of the names of my grammar school teachers have escaped my memory. What they taught seems to be even more elusive.

I remember the report cards – sometimes done on heavy stock paper and sometimes on regular paper. These consisted of a listing of subjects and categories for which I was being evaluated, followed by numbers, and, occasionally, some written comments concerning whatever problems or progress I might be displaying during class.

Although my mother might discuss this or that aspect of my report card with me, I don't ever recall being all that much interested in, or concerned with, the issue of grades. Like a lot of other things involving school, report cards were just something that had to be endured.

One of the few memories of a – possibly -- positive nature that is associated with grammar school took place in the third grade. My teacher – Mrs. Perry – seemed to me to be a somewhat gruff, heavy-set, gravelly-voiced woman who ran a fairly tight ship but who, otherwise, seemed okay.

Apparently, at the beginning of third grade I was considered to be a member of the less gifted end of the student spectrum in my class. At some point during the year, something happened – I have no idea what that something might be – and, as a result of this "happening" (or, perhaps, a series of "happenings"), I was moved into the more advanced reading circle that consisted of seven or eight other kids.

In other words, at one juncture in the third grade, I was ensconced in a lower academic circle of schooling. Then, came the great transformation (just kidding) and I was transitioned into a higher academic rung of schooling.

In retrospect, I'm not quite sure what to make of it. On the one hand, perhaps my teacher might have seen something in me and, as a result, she wanted to help nurture what she felt she had glimpsed in the way of raw potential, but, on the other hand, her husband was a friend of my father – I think, on occasion, the latter two individuals used to share a drink or two together – and, consequently, perhaps, she just was giving me a chance of some kind as a favor, of sorts, to my father.

Whatever the truth of the foregoing matter might be, it was the first time that I began to become consciously aware – however marginally -- that there were group distinctions being drawn within the class that differentiated among students according to academic potential or ability. I'm sure that, on some level, I was aware there were different reading groups, but the process of undergoing a switch from one reading group to another during the school year seemed to suggest that the grouping of students was not just an artifact of random selection.

The foregoing decision by my third-grade teacher might have set me on the road to better things as far as schooling is concerned. Apparently, I felt her aforementioned decision did change things for me to some degree because when my parents transported me to college, we stopped in my former hometown, and during this part of the trip, I told my father that I wanted to visit with my third-grade teacher and thank her for taking an interest in me … which we did.

Teachers do have the power to constructively shape the lives of their students. Conversely, they also have the power to shape the lives of their students in problematic ways, and I have witnessed the flip

side of the dynamic at work over the years both in relation to myself as well as in conjunction with the lives of other individuals.

With a few exceptions, grades four through seven seem to be largely absent from my memory banks. There are only two school-related memories that date from those years.

The first memory involves a show-and-tell that my best friend – who lived next door to me – and I did during either the fourth or fifth grade. I can't remember if the opportunity for show and tell rotated through the various members of the class and that the occasion I remember happened to be our turn, or if show-and-tell was a voluntary sort of thing that occurred from time to time at the discretion of the teacher.

In either case, I don't recall what was being shown and talked about during the class. Whatever the focus of the exercise might have been, I'm sure that it was thoroughly informative and a rewarding educational experience for everyone involved.

The only other memory from the temporal period bookended by the fourth and seventh grades occurred during the latter graded bookend. One day, the male principal of the school came into the room, and he appeared to be quite angry and agitated.

He walked over to one of the kids in the class (someone who lived about ten or twelve houses down from my home) and began to violently shake the kid around while he sat in his chair. The principal might even have lifted the kid and his chair off the ground while shaking things about. Or, perhaps, this aspect of things is a cognitive embellishment that got constructed somewhere along the line in the ensuing years.

I have no idea what the object (i.e., the student) of the foregoing exercise had done or was accused of doing. At the time, my best friend was going out with the shakee's sister, but I never discovered what the ruckus was all about, and I don't know if my friend ever knew the backstory concerning the shaking event.

I have very fleeting memories of working in conjunction with the school safety-patrol unit. My task was to try to help protect students from the cars that were traveling near the school around lunchtime and when school was letting out for the day.

Another very ephemeral memory concerns my assigned responsibility – together with another student -- to deliver pint containers of milk to different classes at a certain time each day. Part and parcel of the foregoing are a few memories of how, on occasion, after delivering the milk, the other kid and I would go down to the cellar and hang out for a short period of time before returning to our class.

Throw in the odd, flickering memory that involved reading about the captivating adventures of Dick, Jane and/or Spot, and – when you add the foregoing several pages of excerpts from my school life extending from kindergarten to the seventh grade – you, now, have been introduced to what I remember from eight years of schooling that encompassed thousands of hours of attendance. I have no idea what other people remember from their grammar school years, but for me the time seems to have become something of a black hole from which a few energetic memories have sought to escape before falling back into the darkness.

Perhaps, I had some sort of cognitive problem while attending grammar school, and, as a result, my memory wasn't working properly. However, I have access to a plethora of memories arising in conjunction with non-school activities that took place in an around my time at school, and, therefore, I can't help but wonder why I seem to have such a dearth of memories associated with schooling.

I remember swimming, skiing, hiking, climbing, and exploratory expeditions. I remember playing football, baseball, and basketball with other kids in the neighborhood as well as against kids from other neighborhoods in the town. I remember playing in a small sandpit up the street that was located behind a neighbor's house. I remember trading comic books and collecting stamps and coins. I remember playing games of dice baseball using cards of professional players that were acquired through the purchase of certain brands of bubblegum. I remember cub scouts and the elaborate skits (with costumes and scripts) that were organized by the den mother (my mother). I remember boy scouts and how our troop won a citywide competition and was rewarded with a trip to climb Mt. Washington. I remember learning how to play chess on the back porch of my next-door neighbor. I remember learning how to play basketball – along with

quite a few other kids from different grammar schools in town – through the assistance of Mr. Prebble who was, I believe, some sort of gym teacher associated with the high school but, from time to tome, also conducted basketball clinics for younger children in the town. I remember going to the movies on Saturday afternoon and watching sci-fi, cowboy, war, and, sometimes, horror movies. I remember games of army that were played in the forests and fields around my neighborhood. I remember the fights and squabbles within the neighborhood. I remember buying records ($.99 45s) when they first came out. I remember bowling, playing pool, and learning to dance at the Institute (a gathering place for kids in the town where I lived). I remember going to street dances. I remember walking a mile, or so, to and from the Church in the next town over. I remember delivering the Grit Newspaper in the early evening hours half way across the town in which I lived. I remember stealing my older brother's bike and teaching myself how to ride it. I remember going to watch my older brother play high school basketball. I remember performing a variety of acts of juvenile delinquency for which I – mostly -- never got caught. I remember participating in town-sponsored Easter egg hunts with clues being given out on the local radio station. I remember going outside during the waning remnants of a hurricane. I remember building snow forts and having snowball fights. I remember accompanying my mother and father on several occasions after sunset when they drove the family car to a height of land about 17 miles north of the town where we lived and looking for UFOs after my mother and a group of other mothers in the neighborhood claimed to have seen a UFO hovering over the neighborhood. I remember listening to a variety of radio shows on Fridays, Saturdays, and Sundays (e.g., Gangbusters, Johnny Dollar -- Private Detective, Tarzan, The Inner Sanctum, The Shadow, Amos and Andy, and so on). I remember going with my father on some of his electrical contracting jobs. I remember picking beans and mowing lawns for money. I remember trips to the family farm and the associated outhouse up on the hill behind the farm.

All of the foregoing events – and many others that I haven't mentioned but do remember -- took place at various junctures during the eight year period of schooling mentioned previously. The time

spent outside school is well represented in my memory banks, but the time spent in school I remember hardly at all.

Evidently, all those years ago my memory had been working properly – albeit, somewhat selectively. So, something else must be responsible for the relative absence of memory that I have in conjunction with my time in grammar school.

One possibility underlying the differential in memories involving school and non-school activities might revolve about the issue of the locus of control that I had on any given occasion. I never quite got what the point of having to go to school was all about.

I knew that they wanted me to learn things. Nonetheless, I often didn't understand why they wanted me to learn some of those things – and, furthermore, I wasn't interested in learning many of the things they wanted to instill in me.

I had very little control over the foregoing process. However, there was one aspect of things that, to a degree, remained under my control, and this had to do with being able to resist the process of schooling in a variety of ways.

School was something that – for reasons unknown to me -- I was required to attend. I understood this on some level, and, therefore – within certain limits – complied with the adult expectations that surrounded school, but apparently, while my body was present, much of the rest of me was somewhere else.

Remembering things – at least for me -- becomes much more difficult when I am not a willing participant in the process and do not have a certain degree of control over its dynamics. Moreover, in retrospect, it seems rather strange to me that adults should have assumed that compulsory schooling was something in which I – or any kid -- would be interested.

There were a lot of things that I learned outside of school without being compelled to do so. Compulsion actually undermines the learning process in many situations.

My fondest memories of life in grammar school came in June of each year. I remember on the last day of school all the kids in my class were required to apply, and rub in, a paste-like polish to the wood desks we had been using during the school year. This process became

a harbinger of the relative freedom that was soon to come because the desk-polishing exercise marked the end of the school year.

I liked to learn things, and in various ways – school notwithstanding -- I did manage to learn a variety of ideas and facts. I just didn't seem to like learning those sorts of things in school or, in some way, found the experience traumatic and, apparently, this had an adverse effect on what I was able to take away from the schooling experience.

Presumably, somehow I learned enough to satisfy the minimum requirements associated with the schooling process. After all, I did bring home those report cards that -- despite whatever problems I might be experiencing in school – nonetheless indicated that I was being promoted from one grade to the next, but how any of this was accomplished is pretty much of a mystery to me.

Prior to starting the eighth grade, my family moved from the hilly regions of Western Maine to a town along the northern edge of central Maine. The town to which we were relocating was fairly small -- maybe 800, or so, people – and, therefore, it was about one-tenth (or less) the size of the town in which I had been living.

I was never all that good at making friends. Moving to a new town didn't change things in that respect, and, consequently, in a lot of ways, I felt – and became -- fairly isolated.

The trend of not remembering much about what took place through the process of schooling carried over into the eighth grade. My new teacher reminded me a lot of my third-grade teacher both with respect to physical stature and her manner of conducting the class, but I don't remember much of what took place within the classroom during that period of time.

There are just a few school-related memories that have survived from that part of my life. One had to do with the cliques that were present among my new classmates and often manifested themselves at recess … cliques that I had no desire to join and, therefore, social groupings that helped to lend further definition to, as well as reinforce my status of, being an all-around outsider.

One of the few other memories that I have concerning the eighth grade – at least the schooling part – involves music class. Maybe once a

month, or so, a woman would visit the school and get us singing various songs (not your top ten type of melodies) down in the school basement.

In addition, I believe that, from time to time, she tried to teach a little bit of music theory. For the most part, it went in one ear and out the other.

My initial year of high school started out problematically. There was a hazing process that had been a fairly well established tradition at the school.

During hazing week, first-year high school students were considered to be fair game to be treated arbitrarily – if not, at times, abusively -- by all upper class students. This took place in several stages.

One part consisted in being required to memorize some set of passages from the Maine State Constitution (the Preamble, I think). Then at random junctures throughout a designated day, any upper class student could demand that a first-year student would have to recite the requisite material, and if the student made any mistakes, then he or she would be forced to take a bite of a raw onion.

I was challenged to recite the indicated material once or twice. On each occasion, I managed to recite the required passages, but on one of those occasions, the upper class student who was challenging me claimed that I made a mistake, but when I asked him to indicate the nature of the mistake, he just kept insisting that I made a mistake, and I was forced to take a bite of an onion.

The other part of the hazing process took place in the Community Hall during school assembly. My task was to wear large rubber boots and avoid being tagged by another first year student in equally large rubber boots as we ran around the basketball court.

I was good at running as well as zigging and zagging. After awhile, I felt sorry for the guy chasing me and let him catch me, and our part of the festivities were over.

There were many parts of the hazing process that bothered me. I deeply resented being treated in what I considered to be abusive and arbitrary ways, but even more troubling to me than the

aforementioned behavior was the fact that the teachers and principle – having knowledge of the situation -- let it happen.

I was the only first-year high school student in my school that played varsity baseball and basketball (there was only one other male in my class). Almost all – if not all -- of the other members of those teams were juniors and seniors, mostly the latter.

During the basketball season, the team was doing pretty well for the first five or six weeks of our schedule. However, there was a lot of flu going around at one point during the season, and, so, the coach instructed the team members to stay away from some of the area dances.

He knew that I liked – loved – going to some of those dances. He told me (to the best of my recollection none of the other players frequented those area dances) that he was going to show up at those locations, and if he found me at any of those dances, he would suspend me from the team.

In other words, he was indicating that his intention was to visit those locations and expose himself to whatever viral agents were in the air, and, then, he would come back and interact with his players during practice … exposing his players to whatever he had been exposed. I thought the idea was dumb, and, moreover, I didn't think much of his belief that he felt he had the right to control what I did away from school, but, despite my thoughts on the matter, I complied with his directive because I wanted to be able to continue playing basketball.

The basketball coach also had this 'thing' about salt tablets. Prior to the start of the season, when team members were getting into condition, he would force everyone to take a salt tablet toward the end of practice.

My body knew better than the coach what, if anything, was missing from my body following a work out. My body's response was to vomit soon after being given a tablet, but this didn't stop the guy without a medical license from insisting what he believed needed to take place.

When baseball season arrived, the baseball coach – who also was the foregoing basketball coach – wanted to challenge his players, so he

brought in a former graduate of the high school to pitch batting practice. From my own experience – as well as that of my older brother (who already had graduated from high school) – I knew the person the coach was bringing in was often inclined to be mean, violent, and drunk.

I was fourteen years old and that guy was 20, or so, with a blazing – if sometimes wild -- fastball. Given what I knew about the situation (and, I might note that this was a time in which there were no batting helmets), I told the coach that I wasn't going to bat against the guy the coach had brought in.

The coach kicked me off the team for a week or so. He might have questioned my courage – or, perhaps, he didn't like being defied -- but I was the only one on the team who had the guts to stand up to him and indicate that I was not his chattel to be subject to whatever dangers he wished to expose me.

My first year of high school was 1958. Sputnik had been positioned into orbit the previous October, and, as a result, many people within the United States had become alarmed about the possibility that American students were falling behind their Russian counterparts in subjects such as science and mathematics.

As a result, a variety of programs were instituted on both a national (e.g., through the National Science Foundation) and state level. In the latter case, the Maine Department of Education implemented several courses – one focused on science and the other program revolved about mathematics – that were conducted through television programs and roving instructors.

For some reason – and I don't recall how it came about – I was selected for participation in the state educational programs. I was the only student in my high school (small as it was) to become engaged in the program.

Two or three times a week during the school year, a television would be set up for me in one of the school class rooms. The audience of one would watch lectures on science and mathematics.

Every month, or two, representatives of the program would show up at my school and talk with me about the material. In the case of the science course, this involved one-on-one tutorials, and in the case of

the mathematics course, participants from several surrounding schools (all much, much bigger than my high school) would get together with a visiting program teacher and go over the material and discuss it.

I was one of two first year students in the state who were participating in the program … most of the other participants were juniors and seniors. In the science portion of things, I placed 11th in the state, while the other first year student was second or third, but I did less well with respect to the mathematical side of things.

For whatever reason, my high school science and math teacher – who also was the principal – never participated in any of these one-on-one or group sessions. Moreover, to the best of my recollection, he never really asked me any questions about what was going on with those courses.

I found the situation somewhat perplexing. On the one hand, the principal of the school had made special accommodations for me to participate in the program, while on the other hand he didn't seem to have much interest in what I was doing even though he was the science and math teacher for the high school.

Another indication concerning the growing emphasis on science in high school curriculums involved the addition of Earth Sciences to the usual litany of science subjects – namely, physics, chemistry, and biology. The teacher in my high school who was saddled with teaching the course had absolutely no knowledge of the subject … he taught history and civics related courses.

I liked science, and, therefore, I read the textbook for the Earth Sciences course. Apparently, few others in the class read the textbook or were interested in the topic of Earth Sciences.

Therefore, classes usually involved the teacher asking questions, but, for the most part, I was the only individual prepared to answer his queries. Whenever the teacher was uncertain about some aspect of things in the textbook, he would call on me to, hopefully, provide some sort of illuminating commentary.

From one perspective, the teacher was giving me a chance to shine. From another perspective, the teacher was unqualified to teach the course and was using me to help him get through the year. From

yet another perspective, the teacher was putting me in a position that might be resented by other students -- students with whom I had to socialize and get along with independently of that class.

I already was something of an outsider. What was transpiring during Earth Sciences classes wasn't helping my situation.

At some point during that course, I got irritated with the situation. The teacher asked me to provide some sort of explanation for an issue, and I responded: "You're the teacher, you should teach."

Naturally, I got kicked out of class and suspended from school. I wasn't allowed to return to classes until I apologized to the teacher, and eventually, this did take place when I went to the teacher's apartment accompanied by my mother.

The teacher was not a bad guy … in fact he was pretty easy-going, mild-mannered, and, generally speaking, quite supportive of students. He was just trying to do the best he could under difficult circumstances in which he was being asked to teach something about which he knew nothing.

However, the teacher was not required to apologize to me – or the other students -- for not knowing the subject. In addition, the school was not required to apologize to me – or the other students -- for putting a teacher in a position of having to teach a subject about which he was ignorant. Furthermore, neither the teacher nor the school was required to apologize to me for putting me in a difficult position vis-à-vis the other students.

I learned something from that series of events. What I learned is not flattering to the process of schooling.

Moving on to another issue, for a variety of reasons, I took quite a few extra courses during high school relative to most other students. One of those courses was business law.

My basketball and baseball coach taught the course. That teacher had replaced the previous coach with whom I had a few run-ins (outlined earlier) during my first year of high school.

I didn't set out to cause the teacher problems, nor was I trying to be a wise guy. He was attempting to teach a straightforward course in business law – mostly for commercial-track students – and being

largely ignorant of the business world, I was approaching the course as if it involved an exploration of issues involving the philosophy of law.

To his credit – and part of this might have been due to the fact that I was his star athlete and he was trying to avoid problems between the two of us – he permitted me to raise a wide variety of questions concerning business law. Those questions, quite likely, were only of interest to me because no one else in the class seemed to be inclined to raise those sorts of issues or take part in the ensuing discussions.

Many years later (more than 50) I discovered – after talking with my former teacher/coach during a reunion -- that he considered my questions of sufficient value to approach some lawyers that he knew in several near-by towns and ask them the questions that I was asking of him. After consulting with those individuals concerning such matters, he would come back to class and provide some feedback to me about various issues that I had raised in previous classes.

I also subsequently learned from my former teacher/coach that the year after my graduation from high school he would begin some of his business law classes in the following way. He would indicate – without mentioning a name – that he once had this student (i.e., me) who used to be the bane of the teacher's existence by peppering the instructor with all kinds of philosophical questions concerning business law, and my former teacher/coach indicated that he wanted the new students to just read the text book and learn the material in the book without trying to stray too far from the text.

If I hadn't been a star athlete, I'm not sure how the business law class might have gone. He accommodated me to a significant degree in that class, but, clearly, based on what he told some later classes in business law, he didn't want other students to do what I had done, and, so, I have to wonder why he let me do what I did.

The aforementioned discussion that took place between my former teacher/coach and myself and that occurred some fifty years after my graduation from high school brought a number of additional issues (beyond the business law class) to the surface that were interesting … at least they were of interest to me. The foregoing meeting took place as a result of school reunion (occasions that I avoid like the plague) that my older brother had attended, and at some point during the reunion, my former teacher/coach told my brother that he

(the teacher) had heard that I had moved back into the area and that he (the teacher) was sort of desperate to speak with me.

My brother passed on the message along with a phone number. I was miffed with my brother for putting me in that sort of a situation, but, eventually, I called my former teacher, and, one thing led to another, and, reluctantly, I finally agreed to drive 50 miles, or so, and have lunch with him at his home.

The meal he wanted to serve me was some sort of pork dish. I indicated that I was Muslim and couldn't eat pork.

He recovered quickly from the – I am sure – somewhat surprising information and remarked that we all worshipped the same God. It was a statement with which I didn't disagree, but the remainder of the extended discussion did not return – except in several very peripheral ways – to the topic of religion.

After that we spent about three or four hours talking about a variety of issues – some having to do with the years we spent together, while other topics touched on some of the things that he and I had been doing since we last had met.

I came away from our discussion with a lot more appreciation for him as a human being than I previously had had – not that I ever thought badly of him. However, I also came away with some other sentiments as well.

For example, during the conversation he expressed surprise when I told him how much of a loner I was in high school. He thought I had been someone who was very popular with lots of friends … neither of which was true.

His surprise told me a great deal. The reality was that he knew little, or nothing, about me when I was his student/player.

He had an impression of me based on his roles as a coach and a teacher. However, like an iceberg, there was a lot more to me than what appeared on the surface.

He knew little of my hopes, frustrations, thoughts, fears, difficulties, anxieties, likes, interests, and so on as a human being. This wasn't his fault since I really wasn't interested in divulging any of the foregoing personal issues to other people – including teachers, coaches, ministers, acquaintances, girlfriends, brothers, or my parents.

For example, he didn't know that although I participated in high school basketball and baseball because I liked the athletic aspect of those sports and because I was fairly good at them, nonetheless, I hated the competitive nature of high school sports. For the most part, I had no deep feelings about winning or losing as long as I felt I had done the best I could on any given occasion.

Everyone – or most everyone – likes to win. However, wanting to win is not the same thing as having a burning desire to compete against other human beings and in the process try to dominate the latter individuals.

Although Harvard doesn't give out sport scholarships, apparently (or, so, I was later told) one of the reasons I was admitted to Harvard was because of my skills on the basketball court. Nevertheless, when I went to Harvard, the idea of trying out for the basketball team never even crossed my mind since I had no desire to try to competitively prove myself against other students.

There was another dimension of my reunion with my high school teacher and coach that I found to be intriguing, if not disturbing. I noticed at certain points of my interaction with him during the reunion that I still had a sense of feeling subordinate to him … of perceiving him to be a person who wielded authority over me.

This is one of the main things that schooling seeks to instill in the youth – both intentionally and unintentionally -- who pass through that process. There is a primary division in schooling – that plays out on a variety of levels -- between those who have power and those who do not possess power.

My former teacher/coach was a decent man. He was not an authoritarian or mean individual, but, rather, he was someone who had been given legal authority to bring about certain results within the classroom and in the arena of sports.

Yet, there I was – more than fifty years later – feeling the unwelcome presence within me of an indelible mark that had been imprinted on my being five decades earlier and that played a role, of some sort, with respect to shaping how I felt about a variety of issues. The feeling was very disconcerting.

Teachers and coaches often want to have a molding influence on their charges … to imbue students with a variety of life-lessons concerning how to think or feel about a variety of issues. Some young people seem to enjoy the foregoing sort of molding process, but there are many students who do not want to be molded in that manner but wish to have, instead, a non-authority-based relationship with adults that would be directed toward helping to facilitate a student's exploration of this or that dimension of life without – within certain practical limits -- any expectation about where such an exploratory process should go.

Before moving on, there was one other piece of information that emerged from my decades-later meeting with my former teacher/coach. He told me that after he accepted the job as teacher and coach at my high school and was doing an inventory of different kinds of school resources, he found that there was no sports equipment or uniforms present in the storage lockers for athletic materials.

He later found out that before the previous coach moved on to another school the latter coach – the one with whom I had several disagreements – had given everything away to a number of students who either had graduated, or were graduating, from the high school. Although quite a few individuals might be adversely affected by the previous coach's actions – not to mention financial costs to the school for replacing that equipment and athletic uniforms -- I have no doubt that the guy was throwing a parting-shot my way because I was about the only carry over from his team to future basketball and baseball hopes at my high school during the next several years.

I heard from my older brother that the coach in question went on to win quite a few titles with various high school athletic teams in different parts of Maine. This just goes to show that winning doesn't erase the jerk factor that sometimes resides in people who are considered to be "winners".

Between my junior and senior years of high school, I won a National Science Foundation scholarship to study the theory of semi-conductors at a college in New York City. This was another part of the renewed emphases on science and mathematics that had been sweeping America since Sputnik assumed its orbit in space.

There were about 15, or so, students (consisting of both male and female) in the New York program. Some of them came from as far away as California and other distant locations, but many of them were from the Tri-State area.

The first couple of weeks were directed toward renewing various aspects of science and mathematics. I remember several classes dealing with, among other topics, thermodynamics and matrices.

For reasons that were never clear to me, the course-work stopped approximately a third of the way through the semester. In the place of lectures, the students were taken on a variety of field trips – some related to science/technology while others were cultural or artistic in nature.

For example, we visited the Indian Point Nuclear Plant that was being constructed around that time. The facility subsequently became the source of a lot of environmental problems.

We also visited an oil-refinery and a paint factory. Later, of course, lead-based paint and oil were involved in a variety of environmental and health problems.

I don't know how much the college and the professors were receiving from the federal government to run the course on semi-conductors. However, for the most part, the reasons for which they were provided with money had little to do with what actually went on during that summer program.

I enjoyed my time in New York. I was able to: Exercise my artistic side a little bit (a teacher in the college's art department provided some constructive feed-back with respect to some of my drawings); perform a few off-book experiments in one of the college's chemistry labs; visit a few museums (e.g., the Museum of Natural History); become exposed to some Improv-comedy in Greenwich Village; have Theodore Bikel (a folk-singer and actor) come out from his apartment in the Village and sing us a few songs from a Washington Square bench; go to an exhibition game between the New York Yankees and the San Francisco Giants (the year that Roger Maris set the home run record); participate in some walking tours of various parts of Manhattan and, in the process, acquired a little feel for big-city life (while in New York, a rape and a murder occurred just down the street

from our dormitories and near the small restaurant where I used to go to indulge myself in a Lime Rickey or two); and, finally, tour the facilities of a number of big corporations involving nuclear power, oil, and chemistry.

However, none of the former activities was the reason I traveled to New York City in the summer of 1961. Neither I nor my parents were paying for the trip, and, therefore, at the time, I saw no reason to register a complaint (and as far as I know, none of the other students complained about the situation either), but it was another instance of someone else making a decision about what they felt was the best way to proceed in conjunction with my life without really consulting with me or trying to determine how I felt about the matter or how I might want to use the time available to me.

I remember at some point following my return from the summer program that my father decided to quiz me about semi-conductors in front of a visiting relative (maybe a little older than my father) from New Hampshire. I don't know whether my father was trying to provide me with an opportunity to dazzle that relative concerning what I learned or whether he was trying to show me and my uncle how little I actually knew, but the questions kept coming.

My father was an electrician, and around the time that I went to New York, he had been studying the theory of semi-conductors on his own so he knew a fair amount about the subject. Despite asking me a variety of questions, all he got from his sixteen-year old son was silence since, in truth, there was really nothing I could say about a subject that was largely absent from my summer program, and I really didn't want to get into the whole matter of what actually had taken place during the summer.

Perhaps the difference between how my father and I engaged the topic of semi-conductors is instructive. I might have learned a great deal more about semi-conductors if I had been given a grant to study the subject on my own rather than having to go through a schooling process that, for whatever reasons, didn't seem all that committed to exploring the topic for which the instructors – and college -- were being paid by the federal government.

Academically speaking, I seem to do best (as far as learning is concerned) when I am just permitted to go about things in my own

way. When I am encouraged to work on my own, stumble about a little, experiment, and, if necessary, ask questions I consider to be relevant concerning this or that topic, I seem to be do much better than when things are arranged to take place in pre-determined ways that often have little to do with my interests or capabilities.

The final episode from high school that I will outline here has to do with my graduation speech. Tradition dictated that I should memorize my talk and present it.

I told the principal I wasn't going to do that. He was upset with my decision and kept trying to persuade me that I was not doing the right thing, but I held firm and just read my speech.

Nothing really rested on whether, or not, the speech was memorized and presented or merely read. The real issue was about whether, or not, I was going to live up to the expectations that were rooted in an arbitrary tradition … much like the hazing episodes that had to be endured four years previously.

At that point in the schooling process, I wasn't interested in trying to prove anything to anyone about my abilities. I had done my time, and I had had enough of the arbitrary nature of some of the traditions that surrounded schooling, and, as a result, I was indicating to the principal my desire to take control of my own life and do things in accordance with what I thought might constitute the best use of my time.

There are a few experiences from my years at college that resonate with some of the foregoing high school themes. For example, I encountered quite a few difficulties making the transition from an extremely small rural high school (44 students, 11 in my graduating class) to one of the most competitive, academically challenging universities in the world, and one of those problems involved a course in ancient Greek that I took my first year (the course was selected as part of the pre-theological career choice that I had made prior to entering university).

For whatever reason, not enough textbooks were ordered for the course. I was the one who was left without a chair when the textbook music stopped.

I approached my professor about the matter, but he didn't seem to be too interested in my situation. Apparently, the problem was left for me to try to solve independently of him.

Whatever he might have been trying to teach me, the lesson that I learned was that he was uninterested in me as a human being. Eventually, I stopped going to class and, as one might have anticipated, I ended up flunking the course.

Another course I took my first year involved social relations – an interdisciplinary approach consisting of various elements from psychology, sociology, and anthropology. At one point during the course, a paper was assigned that was supposed to be based on some sort of empirical project that the students in my tutorial section were required to produce individually.

For my project – and I didn't discuss the matter with my tutorial instructor -- I decided that I would go across the river to Boston and ask various people some questions about birth control. I would do this in two different guises -- one guise involved wearing a suit while the other guide one consisted of wearing a sweatshirt and sneakers -- because I wanted to see if people might be more willing to respond to me when I wore one kind of attire rather than another.

This was back in 1962-63 when birth control was an even more controversial topic than it is today. Moreover, Boston – both because of its sizable Italian and Irish populations – was heavily Catholic.

I went and knocked on doors in several urban locations in Boston. I did this wearing different attire.

I discovered that people seemed to be more willing to talk to me when I wore a sweatshirt and sneakers than when I wore a suit and tie. I reported the results in my paper.

My professor seemed to doubt that I had done what I had done. Perhaps – and, if this is the case, he might have had a point here – he felt that no one could be stupid enough to do what I had done and that I would have just been asking for trouble with that sort of a project.

I will admit to being very naïve. Coming from a small-town background, I really didn't have any appreciation for the nature of big-city life or how city people – who were very likely to be Catholic -- might react to the questions I was asking.

Nonetheless, apparently, my tutorial leader was no more interested in me than my Greek professor had been. I forget what I got for a grade on the paper, but it wasn't all that good and, mostly, this seemed to be because he didn't believe that I had done what I had done … although, admittedly, there were a number of methodological issues that swirled about the project and not all of those problems were properly addressed in my paper.

Proving that I had done what I had done in conjunction with the project would be quite difficult. Consequently, I didn't have much recourse for challenging the grade I was given and, as a result, I just let it go.

In general, I did poorly my first year. Consequently, I was instructed by Harvard to take some time off and try again later.

A couple of years passed by, and I decided to take a summer course at Harvard in German. It was an intensive course, with classes running for an hour, or so, five days a week complemented by a number of required language labs.

I took the foregoing course in order to satisfy the language requirement that Harvard had in place at the time. In addition, I needed to get at least a C in two courses in order to be re-admitted to Harvard, and the intensive course in German counted as two courses.

Despite working a full-time, afternoon/evening shift within the Boston University library system, I managed to get an A in the course. I returned to Harvard in the fall of 1965.

However, when I returned to college, I petitioned to live off-campus. Despite working part-time and receiving some financial aide, Harvard – even back then when tuition and on-campus living expenses were only a small fraction of what they are today -- was too expensive for me, and I needed to find ways of cutting expenses.

I received a lot of opposition from various Harvard administrators on this issue. However, I kept pressing the point, and, eventually, they relented.

The social networking side of college life likely suffered considerably as a result of the foregoing decision. Nevertheless, I felt much more comfortable in my relatively inexpensive apartment in

East Cambridge than I would have had I decided to live in one of the upper class 'Houses' on campus.

There are only a few further items from my undergraduate college life that I will review here. For example, the first year that I returned, I took a course in psychology.

At some point during the course I wrote a paper on nature versus nurture. The woman who read and graded the paper spoke to me when she returned the essay to me.

She said that the paper was too long. She gave me an A on the paper, but she told me that the only reason she did so was that the paper was too good to mark down despite its length, but, nonetheless, she went on to indicate that if I did this sort of thing again, then no matter how good the paper might be, she would hold the length issue against me and mark me down accordingly.

I was a little nonplussed. I was the one paying tuition, and she was the one who was getting paid to help further my education, and, yet, the problem between us seemed to be a function of the time she might have to invest in reviewing future papers from me rather than being about what I could learn from researching and writing such papers.

During my junior year, I wrote a paper on anxiety. I got an A on the paper with the following comment. "An excellent overview on the topic of anxiety but 300% of the suggested length."

I realize that for professors, teaching assistants, and tutorial leaders, time is a very valuable commodity. I also understand that, relatively speaking, there are far fewer instructors and teachers than there are students, and, therefore, educators have to apportion their time carefully.

Nonetheless, I'm paying for an education. Yet, apparently, my education must fit into what teachers consider to be most convenient for their schedules.

On any number of occasions, I wrote papers that would come back with the odd word or phrase underlined in the paper followed by a question mark or an illegible word or phrase written in the margins. There might be, as well, a sentence or two written at the end of the paper to summarize the instructors overall sense of the essay.

For the most part, I had no idea what any of the foregoing squiggles meant. It took me between 10 and 20 pages to try to elucidate some sort of complex issue, and, yet, I was supposed to know what an instructor was thinking by a, presumably, well-placed, scribbled question mark or often indecipherable word/phrase in the margin of my paper.

It was the academic two-step. The instructor would pretend to be interested in what I was writing, and I would pretend to be interested in what the instructor had to say (or not say) about what I had written.

During the oral defense of my undergraduate honors thesis, one of my examiners – a graduate student in psychology who was one of the individuals who had been tasked with quizzing me about my project -- indicated that he didn't see much in my honors thesis that reflected established academic views. Oy vey!

After four years at Harvard, I still hadn't learned the lesson that, apparently, education was not about critically seeking the truth of things. Instead, education was – at least as far as the person who was making the foregoing critical comments was concerned – about exploring the interests, opinions, and theories of other people irrespective of whether, or not, those ideas had anything to do with the truth.

The thesis I was attempting to defend was an exploration of my ideas about certain issues. During the thesis, I critically reviewed the ideas of various historical figures prior to developing my own ideas but, according to the individual who was commenting in the aforementioned manner, apparently I was not being sufficiently deferential to those historical figures since I rejected their ideas and was trying to develop a more satisfactory account of a given issue that was not built around what those theorists had to say on the matter.

For the most part, I enjoyed and benefitted from my time at Harvard. There were a few professors in particular that I really enjoyed working with – most notably my thesis advisor – Robert White – who took a genuine interest in what I was doing even though I approached him initially as someone who didn't agree with the theory of anxiety that he had put forth in a textbook on psychopathology that he had written.

Nonetheless, my four years at Harvard were far from problem-free. Some of those difficulties have been outlined in the previous five pages.

Following graduation from college, I went to Canada to resist and protest against the war effort in Vietnam. Initially, I didn't have any plans to go to graduate school within my new national home, but after a few years of doing this and that, I decided to pursue a doctorate in clinical psychology.

I applied to one school and was accepted. Prior to beginning the program, I talked with a number of professors about taking a few non-traditional courses (having to do with phenomenological and existential approaches to psychology) in addition to my regular courses, and I was given approval to proceed in this manner. However, once the year began, the department backed out of the agreement, and, as a result, I withdrew from the program.

A few years later I changed directions and decided to work toward a doctorate in education. I applied to another university and was accepted into its doctoral program for education.

17 years were required to obtain a doctoral degree. Some funny (in the sense of 'odd' but quite 'normal') things happened on the way to the forum where diplomas were being awarded.

To make a very long story mercifully shorter, I eventually fired – after 17 years -- my thesis committee and cobbled together an ad hoc group of people (both from within and outside of the university) who were acceptable to university administrators and who would serve as an examination committee for an oral defense of my thesis. On my own, I had researched and written a second thesis (the first one was never read by anyone on my original thesis committee), and, after completing the second dissertation, I went around to various individuals and asked them if they would be interested in serving on the aforementioned examination committee.

The final committee consisted of individuals from quite diverse backgrounds. There was: A physicist; a biophysicist; a linguist; several individuals with strong backgrounds in philosophy of science, as well as someone who was a specialist in adult education, but since my thesis involved an exploration into: Quantum physics, relativity theory,

chronobiology, holography, language, mathematics, epistemology, education, and hermeneutics, the assembled group of examiners were quite appropriate selections.

The thesis was approximately 900 pages long. Obviously, I had not been able to break free from my inclination to go on at length in relation to my written submissions … an inclination that had been on display during my undergraduate years and that – as noted previously – had been critically commented on by a number of my instructors.

After I exited the program with my diploma in hand, the university passed some sort of rule indicating that a thesis could not be longer than 300-400 pages. I could be wrong, but I believe I might have been an unnamed co-conspirator who had helped inspire the implementation of the new length guideline for dissertations.

Toward the end of my doctoral oral defense, one of the examiners – a gentleman from adult education – summed up his feelings about my thesis in a way that was not intended to be humorous but was, nonetheless, quite funny. He said: "I have never before seen a thesis like yours, and I hope to never do so again."

Since the committee voted 7-0 in favor of accepting my dissertation, I'm not quite sure what to make of the foregoing statement. On the one hand, he, obviously, had judged the dissertation to be – at least in some minimal sense – acceptable. Yet, on the other hand, apparently he considered the thesis to be – in some unelaborated sense – rather disconcerting and troubling, if not problematic.

There were several reasons why 17 years were needed to obtain a doctorate. Many of those reasons had to do with prejudice, but the nature of that prejudice was varied in character.

One form of prejudice revolved about my unwillingness to adopt the world-view of my thesis advisor concerning a variety of issues. For example, I was critical of certain individuals that he appeared to consider to be something akin to philosophical gods, and, as a result, he maintained that I – as a mere student – had no academic standing to engage in those sorts of critical activities.

With respect to establishing the place of students in the scheme of things, various other colleagues of my advisor appeared to share his

sentiments. For example, I had conversations with a number of students from other graduate programs (including the sciences) at the same university, and they all bore witness to having encountered a similar strain of an authoritarian dynamic in their own graduate programs … and while not all professors were inclined in such an authoritarian manner, nonetheless, there were enough of the authoritarian kinds of individuals to make the lives of many students quite miserable.

Maybe if I had just submitted to the philosophical catechism being promulgated by my advisor, I might have been able to obtain my degree quite a bit more quickly than the 17 years that actually were required. Doing so, however, would have flowed in opposition to everything that I considered was important with respect to a search for truth.

Rather impractically – at least from the perspective of some -- I didn't look at graduate school – or even my undergraduate days in college -- as a means to a career. Instead, I was looking at education as an opportunity to work toward trying to resolve issues concerning: Truth, justice, morality, identity, purpose, community, knowledge, and understanding, but my advisor was rather insistent that I do things in a way that was subservient to his sensibilities with respect to those sorts of issues.

Academia has something in common with the legal and medical professions. Individuals operating within those realms are often very reluctant to buck the system when it comes to defending their domains against interlopers such as myself, and, as a result, there weren't very many people in my department – or the graduate school in general -- who were sympathetic to my situation … although, eventually, I managed to locate the requisite number of independent individuals who were willing to give me a fair chance with respect to obtaining my doctorate.

The other source of prejudice that helped grease the skids of longevity that played a role in preventing me from being able to realize my doctoral aspirations had to do with my religion – Islam – and the fact that I was part of a community group that was challenging the provincial government concerning certain aspects of its educational curriculum. The provincial government – through its Ministry of

Education – had a certain amount of influence concerning what took place in the university that I was attending ... indeed, at one point, a person from fairly high up in the chain of command of the Ministry of Education called up the director of my graduate school and made a variety of suggestions indicating that, perhaps, it was time for me to be shown the door (I learned this through the person who was my thesis advisor at the time -- someone that I would later fire -- who was getting heat from the aforementioned director, and, as a result, my thesis advisor was upset about whatever I might have been doing that could be causing those sorts of difficulties.)

Another facet of the lens of disfavor through which many people in my graduate school – as well as among faculty and administrators in other parts of the university -- viewed me had to do with a student group for which I was a chairperson. The group released several documents that, among other things, put forth evidence indicating how one of the faculty members in the university was guilty of having plagiarized material for several articles he wrote in conjunction with a book of readings that was being used as a textbook or as a form of resource material concerning Islam and the Muslim world in various institutions of so-called higher learning in Canada and the United States.

Our student group made copies of the evidence we had accumulated and sent the material out to a variety of universities across North America, asking those individuals to provide us with their judgment about the allegations our group was advancing. Almost all of the professionals who filled out our survey and returned the material to us indicated they thought that the professor had committed plagiarism.

There was only one consequence for the professor in question as a result of our activities. The powers that be in the university appointed him to serve as faculty liaison in conjunction with a committee consisting of both students and professors that investigated potential honor code violations by members of the student body ... honor code violations like those that would encompass instances of plagiarism that might have been committed by students.

If the allegations of the student group to which I belonged had been without merit, I feel fairly certain that our group would have

been disbanded and, as well, I -- along with other members of that group -- very likely would have been suspended for a time, if not dismissed, from school altogether. The fact that no action – not even a letter of reprimand -- was made with respect to either the group or its members suggests that the university authorities realized they would have been entering into very hazardous territory if they had tried to penalize the group or its members for releasing clear-cut evidence concerning material that had been plagiarized by a faculty member.

The fact that I was able to get my doctorate at all indicates there were a few individuals in academia that had integrity and, consequently, were willing to support my unusual route to a degree. The fact that 17 years were required to complete such a journey also indicates there were – and continue to be – substantial and very fundamental problems in certain dimensions of higher education.

Prior to getting my degree, I remember seeing photocopies on a variety of bulletin boards across the university that reproduced an article about a graduate student in California who was being released after spending 10 or 11 years in prison for having murdered his thesis advisor (some form of manslaughter I would imagine). Written in red letters on the photocopy was a comment: "Think of it … only 11 years."

I didn't kill anyone – nor was I ever tempted to do so. Nonetheless, I still had to serve 17 years while being held prisoner in an academic gulag.

My career opportunities were all adversely affected by the foregoing dynamic. What remained intact, however, was my willingness to fight to defend my sovereignty despite the presence of an array of slings and arrows from outrageous misfortune.

During the 17-year period during which I was trying to obtain a doctorate, I took a variety of jobs in an effort to pay the bills. This work ranged from: Working in different libraries, to: Being a security guard; serving as a delivery person for an up-scale clothes shop; grading exams for the psychological component of an accounting program, and teaching – on and off -- an array of courses for a local community college.

In light of my earlier comments concerning the relative lack of comments that used to appear on my essays after they had been read,

graded and, then, returned to me by this or that instructor or professor, the aforementioned job of grading psychology exams in conjunction with an accounting program has an interesting dimension. More specifically, knowing – from experience – how disappointing it was to spend hours researching and writing a term paper only to have the essay come back with little feedback, I decided that I would not expose students with whom I interacted to the same sort of disappointment. Consequently, wherever appropriate to do so, I provided copious amounts of constructive feedback on the exam papers I was grading.

However, one of the students whose exam paper I graded made an official complaint to the people that had hired me. The individual said that never in his life had anyone written so much on any paper or exam that the person had done.

Apparently, the person in question found the experience quite disconcerting. Of course, when someone is used to being abused, and, then, someone comes along to offer something of a much more constructive nature, then, the latter sort of offering can seem like a form of abuse when considered against a backdrop in which a variety of forms of actual abuse have become normalized.

Another experience of mine also resonates with the foregoing episode. After teaching psychology on and off at a community college over a number of years, I decided to apply for a full-time opening in the psychology department at that college.

The screening committee consisted of three individuals. One of those members was the program head who, originally, had hired me as a part-time instructor and who was quite happy with my work.

One of the other committee members was a former fellow graduate student in the education program discussed earlier. We had a variety of conversations during our tenure together, but we hadn't taken any of the same courses at the same time.

During the job interview, my former graduate school colleague asked me how I planned to engage my students if I was hired. I answered that I would use a system that combined aspects of individualized instruction with group instruction.

Given that most of the classes that I would teach would have enrollments of 30-40 students, my former graduate school colleague expressed a certain amount of incredulity with respect to the individualized aspect of my intentions concerning education. He said it wasn't possible … that all one could do – with perhaps a few exceptions -- was to engage students as a group.

When I taught part-time, I had always tried to provide all my students with as much individual attention as I could. I spent time learning their names so that within a few weeks of the beginning of a semester, I knew their names, and, as well, I tried to provide each of them with a variety of opportunities that were designed to assist those students to make it through a course if not flourish during their association with me during that semester.

I knew what efforts I had made with respect to engaging former students. My former colleague did not have any insight into, or direct knowledge of, how I interacted with students, and, as a result, chose to dismiss both my ideas and experiences concerning education simply because they ran contrary to his beliefs and biases.

I didn't get the job. The committee's vote was 2-1 against hiring me on a full-time basis.

The mind-set of my former graduate school colleague concerning the relationship between teachers and students seemed to be shared by quite a few other teachers and instructors at that community college. I remember inviting a student to have lunch with me in a dining area within the college.

After sitting down with the student, I noticed a number of professors/instructors giving me rather hostile looks. Finally, one of the teachers/instructors came over to me to inform me that students were not permitted in the faculty area of the dining hall.

I listened to the faculty member and didn't say anything. I just kept eating.

After delivering his message, the faculty member walked away from our table. My guest and I left the dining table when we were ready to do so.

About fifteen or twenty years later, I was hired as an adjunct professor for a small university in north-central Maine. The classes

were similar in size to the ones at the community college being alluded to above … that is, those classes consisted of between 30 and 40 students.

One of the standard requirements that formed a part of many of the courses I taught involved producing a term paper. I often wrote more in the margins of those essays than the students had written in their entire papers.

Was my profuse commentary unnecessary? No!

For instance, I don't know what is being taught in many high schools these days (and my students came from different parts of the United States). However, the vast majority of the students that I taught could hardly write a proper sentence, let alone a cogent paragraph, or a well-constructed essay.

I remember one year attending a pre-semester meeting with the new dean of the school. As an adjunct professor, this was the only meeting I was permitted to attend because the rules of engagement for the university were that adjunct professors were not supposed to have any contact – the foregoing exception notwithstanding -- involving full-time teachers.

Someone in the pre-semester meeting brought up the subject of the lack of writing skills that seemed to be fairly common among members of the student body. The suggestion that the dean gave – who came from a background in English Literature – was to return the essays to the students and have the student do the essay again.

There was no hint from the dean about trying to interact with the students and help them with their writing problems. The responsibility for improving things was shifted away from the teachers who were supposed to be involved in helping to educate students and placed squarely on the students themselves who already were victims of educational abuse in the high schools they attended and, now, were being abused again in university.

The university where I taught as an adjunct professor required students to evaluate their teachers at the end of each course. The questions asked were fairly comprehensive, and the students had an opportunity to add their own comments – positive or negative -- concerning their experience during the course.

The evaluations were done without a name being attached to them. Moreover, the evaluations were only undertaken after I left the room, and I was not permitted to return to the room until all students had completed their assessment of the course and its instructor in order to try to ensure that students would not feel intimated by some sort of undue influence that might be perpetrated through the presence of an instructor.

The students left their evaluations on a table at the front of the room. When all the students had left the room, I would collect the reviews and place them in an envelope that was marked with the name of the course and the instructor.

The evaluations eventually were returned to me after members of the administration had a chance to go through them and assess how students felt about the course I was teaching and/or about me as instructor. I possess about five years worth of those evaluations.

With a few exceptions, the student evaluations were highly positive. This was the case irrespective of whether a student had done well or poorly in my course.

The evaluation procedure provided students with an opportunity to make critical comments about, among other things, the manner in which I made extensive comments on their term papers. However, no one ever did make such a criticism … instead, they seemed to appreciate the fact that someone had actually taken the time to offer them something more than merely going through the motions.

Prior to entering my first graduate program – the one in clinical psychology from which I withdrew after some of the individuals in the program reneged on their promises – I taught a summer course for the Ministry of Education in Ontario dealing with educational psychology, and the course was being given to about 30, or so, grade school and high school teachers who were interested in becoming guidance counselors.

I was in my early twenties at the time. Most of the members of the class were my age or older.

I began the course using a more, or less, traditional approach to learning theory. I went through classical conditioning, operant

conditioning, and, then, began to branch out into additional forms of learning theory.

The course ran five days a week. After about a week, I realized that members of the class seemed to be tuning out and, therefore, I stopped what I was doing, indicated to the members of the class what I felt was occurring in the class, and, then, I opened up the class for discussion concerning my observations.

Different members of the class began to indicate they felt there were topics relevant to guidance counseling that might be more deserving of attention than the material being presented to them. For example, drugs were a huge problem and were having a major impact on what did -- or did not -- take place in schools as far as learning is concerned.

In addition, some of the teachers in my course were talking about how kids in their classes were prostituting themselves at lunchtime and after school in conjunction with other students at their schools. Many of the kids to whom they were alluding were between 9 and 11 years old, and, for me at least, this was quite shocking even in the early 1970s.

The members of my class indicated that they appreciated the importance of studying learning theory, but that kind of material was fairly abstract. They were interested in trying to find concrete, practical methods for dealing with the sorts of problems – such as the ones outlined above -- that were taking place in their respective schools.

Consequently, I took their concerns to heart and transitioned the focus of the class away from established ideas about learning and education. Instead, I began to explore a variety of alternative topics with the members of the class involving: Meaning, purpose, identity, existence, and sovereignty … issues that were important not only for a course in educational psychology but, as well, carried implications for how those members of the class might interact with students when they returned to their respective schools.

There were a few of the older members of the class who were unhappy with the change in direction that was to be given expression

through the remainder of the class and told me as much. They wanted to investigate traditional ways of thinking about various issues.

However, the vast majority of the class members seemed to want to move in a different direction. I tried to come up with a compromise solution that would offer class members opportunities to have exposure to a variety of possibilities.

The course abandoned the traditional teacher-student model and operated out of a co-operative enterprise between me – the nominal instructor – and the prospective guidance counselors who made up the class. I took a risk – for instance, I didn't ask anyone's permission to do what I did – and, in the process, I tried to loosen the usual way of doing things within a classroom, and, I believe the risk paid off … at least that was the feedback provided to me by most of the students at the end of the course.

Sovereignty gives expression to a set of principles through which an individual neither seeks to control others, nor be controlled by them. Sovereignty is important to me, and this is true not only with respect to my own personal life, but, as well, the issue of sovereignty is central to how I try to approach education in conjunction with members of any course that I might conduct.

Unfortunately, the educational systems within which I have worked – both in Canada and the United States – have been inclined to try to avoid the whole issue of sovereignty with respect to teachers as well as in relation to students. Within those systems, I only had a few degrees of freedom through which to operate, and where I could, I would try to implement sovereignty-based approaches to education, but, for the most part, there were not many degrees of freedom accorded to me with respect to the foregoing sorts of matters.

Consequently, about eight years ago, I withdrew from teaching in formal settings (e.g., colleges and universities). I switched over to writing books, developing my own publishing company, and using blogs, Podcasts and web pages to try to generate a certain amount of interest in a variety of topics that all, in one way or another, have to do with the issue of sovereignty.

I wish I could say that I had a clear, deep understanding of what was going on within me during: Grammar school, high school, college,

graduate school, or teaching. Although I might have had some dim awareness of what was transpiring at any given point in my life, oftentimes, whatever insight might have become associated with those facets of my life came after the fact – sometimes quite a while after the fact -- and not necessarily while things were taking place.

I stumbled through many parts of life. I made my fair share of mistakes in a lot of areas, but I tried to learn from those errors and, thereby, avoid those problems in the future.

Notwithstanding the foregoing considerations and quite irrespective of whether my understanding of things was acute or blurry, one factor seemed to be persistently at the heart of my existential dynamic – and this factor can be detected peeking through many of the episodes in my life that have been outlined over the last 35, or so, pages – namely, whether done consciously or through an intuitive nebulousness, nevertheless, on a fairly consistent basis, I have attempted to struggle to give expression to the potential for sovereignty within me. However vague the internal sense of things might have been at any given time, that orientation often shaped and oriented how I approached many things in life ... sometimes with problematic results and sometimes in a much more felicitous manner.

If the reader has paid attention to what has been voiced in this foreword, everything that follows will, perhaps, make a great deal of sense. More specifically, the ensuing discussion continues on with an exploration of the realm of sovereignty that began to take shape – however amorphously -- during my many years of schooling.

Chapter 1: Call of the Soul

The experiences that were outlined in the Foreword to this book concerned my journey through the process of schooling – from: Grammar school, to: Graduate school and beyond. Although at the time I was undergoing those experiences, I would not have used the term sovereignty to characterize the issue that was at the heart of my walk about through the shadowy dynamics of the schooling process, nevertheless, all the issues with which I was struggling throughout that journey had to do, in one form or another, with the way in which my sovereignty as a human being was being assaulted by a system that seemed to have little, if any, interest in assisting me to explore the topic of my sovereignty and, thereby, come to an understanding, if not, appreciation of its nuances and possibilities for me as an individual rather than as a resource or commodity for society.

However challenged my surface consciousness might have been with respect to being able to grasp the nature of the issues that were transpiring at any given juncture during the foregoing excursions, my essential soul was, in a variety of ways, calling out to the surface, truncated version of myself and was trying to get the latter dimension of my being to pay attention because something important was at stake. My inchoate self responded by throwing up various forms of resistance … from: Paying so little attention to what was going on in school that I can't remember much about what took place from grades 1-8, to: More active forms of resistance that got me into difficulty with some of my high school teachers, and, finally, culminated in a sixteen year battle with the powers that be in graduate school … a battle in which I was determined to prevent the aforementioned powers from winning the game they were playing with me – namely, that they had the right to control what I thought or wrote or did.

Some might say that, after all is said and done, the administrative and educational authorities with whom I was engaged in hand-to-hand combat during graduate school did, after all, win the aforementioned game because they were able to prevent me from having a normal career. But, the real issue at stake in that conflict was about sovereignty and not about being able to have a career.

Many people have very lucrative careers and, yet, they often sacrifice their sovereignty in the process. I might not have had much of

a career – at least in any traditional sense – but while embattled in the trenches of academia, I reached a point where I was able to sue for peace on my terms and in the process acquired a deeper understanding of the importance of sovereignty to my life, and this was the real victory.

Seeking to acquire control over one's life in order to be better positioned to undertake a quest for the truth of things – and doing so without undermining or adversely affecting a like aspiration in other people – is at the heart of sovereignty. The soul – however one wishes to ideologically characterize this mysterious entity that resides within our consciousness – is constantly calling out to us to pursue sovereignty in order to be able to seek the nature of the truth concerning oneself and one's relationship to reality.

One can take almost any event of political importance in history and understand that event in terms of a dynamic that involves a struggle between the aspirations of sovereignty versus the machinations of forces that seek to oppose an individual's quest for sovereignty. For example, several paradigmatic manifestations of the foregoing idea occurred when -- in 1215 and 1217 A.D. -- King John agreed to two charters that established a framework for constraining monarchy and extending various degrees of freedom to individuals other than the king/queen.

The first charter is known as the Magna Carta and provided for a variety of political rights or freedoms for certain individuals. The second charter is referred to as the Charter of the Forests, and it dealt with access to, and use of, forest resources (e.g., land, wood, plants, honey, pastures, animals, herbs, etc.).

Many people in the West have heard of the Magna Carta. Very few people in the West have heard about the Charter of the Forests.

The latter agreement dealt with the right of all citizens to be able to make use of forest resources such as: Pastures, water, wood, animals, plants, honey, and so on. Those resources were considered by many to be a common good that should be enjoyed by the king/queen as well as commoners alike, and, therefore, usage of those resources should be subject to agreements that could be reached through negotiated, fair, reasoned, discussion … a process sometimes referred to as: "Commoning".

Initially, the first charter – that is, the Magna Carta – primarily concerned rights involving various segments of nobility that had joined in rebellion against, and resistance toward, the reigning monarch (King John). Subsequently, however – and this occurred over a number of centuries -- the list of rights outlined in the Magna Carta was extended to English citizens in general.

The second charter concerning the forests was more inclusive – at least in the beginning -- since it encompassed commoners as well as members of the nobility. Unfortunately, over time the Charter of the Forests was either largely ignored or began to become severely restricted in scope … such as through the 18th century British Enclosure Movement in which smaller landholdings were legally bundled into one large enclosure that became privately owned and, as a result, was no longer part of the Commons that was readily accessible to the larger community.

The foregoing trend toward enclosure has continued on with the rise of nation-states, religious institutions, and corporations that have sought to extend their spheres of control across a spectrum of possibilities concerning the lands, resources, and peoples of the Earth. Nation-states, religious institutions, and corporations – each in its own way – are dedicated to privatizing land and resources (including people) for purposes of servicing the aims of those who hold the reins of power within any given government, religious institution, or corporate entity, and, thereby, those sorts of arrangements exclude the generality of people from having any say in, or influence concerning, what is done with, and to, the Earth.

To whom does the Earth belong? To who do the resources of the Earth belong?

All of the arguments that have been put forth over thousands of years (E.g., The right of conquest; the right of discovery; the right by Divine Decree; the right of the proletariat; the right of Common Law; the right of return; the right of capital, or the right of legislative/executive/judicial fiat) tend to be highly arbitrary. In other words, those arguments are deeply embedded in an array of assumptions, biases, and ideological orientations that are driven by self-serving desires or whims rather than cogent forms of reasoning to

which the rest of society would necessarily be willing to acknowledge as being a fair way of doing things.

All through history, individuals who have advanced the foregoing sorts of arguments concerning the alleged right to control others have not been able to demonstrate the validity or legitimacy of their claims beyond a reasonable doubt as far as people are concerned who do not share the biases, assumptions, or ideological preferences of the one's who are making claims as to why everyone should agree that the resources of the Earth (or some section thereof) belong to the ones advancing the kinds of arguments being alluded to in this paragraph's opening sentence. This inability to produce a claim that other people will concede has legitimacy despite the fact that the latter group of people does not share the biases, assumptions, or ideological affiliations that frame the claims of the former individuals is what makes all the arguments alluded to previously (e.g., right of conquest, right of discovery, etc.) arbitrary in nature and, therefore, unpersuasive.

Based on what is currently known and can be agreed upon by people in general, neither the Earth nor its resources can be proven – beyond a reasonable doubt -- to belong to specific groups of human beings or any other species. Consequently, whatever arrangements are made concerning the Earth and its resources should be conducted with the understanding that there is no demonstrable, universally acceptable provenance concerning ownership of either the Earth or its resources.

The foregoing claim is not offered from the perspective of some sort of relativist philosophy. Rather, whatever the actual, objective truth of things might be in relation to matters of ownership concerning the Earth, its resources, and its inhabitants, nevertheless, it seems to be a fact that no one has been able to develop a compelling argument – an argument that could be acknowledged by everyone beyond a reasonable doubt -- as to why one individual, institution, or a given group of individuals, should be considered to have preferential claims over other individuals or groups when it comes to the issue of ownership and uses of the Earth's lands and resources.

Wars do not determine the rightness of the foregoing sorts of claims. They merely give expression to the dynamics of the way of

power in which might or force is used as an arbitrary, temporary, destructive, problematic and thoroughly unnecessary way of attempting to settle the aforementioned ownership issue without ever actually resolving the underlying nature of the conflict concerning the nature of the relationship – both individually and collectively – with the Earth or its resources.

Might does not make right. Rather, might is often merely a form of bullying that attempts to frame issues through a process of intimidation that serves the interests of those who are morally challenged when it comes to the use of violence to resolve problems.

We are strangers in a strange land. More specifically, the need to engage in the process of "commoning" -- or reasoned, negotiated discussion and conflict resolution -- concerning access to, and use of, the Commons (i.e., Earth and its resources), as well as concerning the nature of rights and duties with respect to the Commons, merely reflects our epistemological ignorance vis-à-vis the Earth and one another.

Human weaknesses – such as greed, selfishness, ignorance, and arrogance – have tended to befog the issues before us when it comes to discussing the Earth and its resources or our relationship with one another. Furthermore, understanding of, and insight into, the foregoing matters has been further compromised by the way in which executives, legislators, and judges of all manner of philosophical and religious orientation have sought to instantiate their own rootedness in human weaknesses of one kind or another in their forms of governance and, thereby, skew the deliberative process concerning the disposition of people, the Earth, and its resources in directions that are ideologically biased as a function of such human weaknesses.

Both the Magna Carta and the Charter of the Forests shared one essential truth. Those agreements were a grudging acknowledgment by King John that the traditional way – the way of power – constituted an untenable way through which to establish rights and allocate resources with respect to the citizens of England (or, at least, some of them … an insight – however limited it might have been at the time the two charters were agreed upon -- that was lost and reacquired – with varying degrees of insight and understanding -- at various points in subsequent history).

The two, aforementioned charters mutually imply one another. For example, no individual or institution is justified in using the Commons in a way that renders human political rights meaningless, and, in addition, no person or institution is justified in denying human beings basic freedoms in order to be able to exploit the Commons to the detriment of other individuals or institutions in the community.

Another way of saying the foregoing is as follows. There has never been an occupation of the Commons by an individual, institution or government without such an occupation being accompanied by various forms of oppression involving the basic human rights that are encompassed by the Magna Carta, and, in addition, there has never been a suppression of basic human rights that has not been perpetrated in order to better exploit the resources of the Commons to the advantage of some but not others and, as such, constitutes a violation of the spirit of the Charter of the Forests.

Furthermore, one should understand that the sentiments underlying the charters of, respectively, 1215 and 1217 A.D. were not unique to those years. Many of the same concerns involving basic human rights and access to the Commons had been reflected upon and discussed in England for at least a century prior to the appearance of the foregoing charters.

However, as has been the case throughout history, those with power tend to forget what has been agreed upon or are reluctant to cede any of their power to others in conjunction with either the realm of human rights or in relation to matters involving the Commons. Consequently, many years were to pass from the time when people might first have begun to explore issues of liberties and freedoms until the foregoing sorts of ideas involving rights and the Commons were to become formalized in the guise of the Magna Carta and the Charter of the Forests.

Furthermore, although, on the one hand, many of the components of the Charter of the Forests became actively disemboweled through, among other machinations of power, the legalities of the Enclosure Movement of 18th century England, nevertheless, on the other hand, numerous facets of the ideas associated with Magna Carta were being further developed, as well as placed on a more solid political and legal foundation, through the efforts of individuals such as Edward Coke

(Attorney General and Speaker of the House of Commons) in the second decade of the 17th century, as well as through the scholarly work of William Blackstone toward the end of the first decade of the second half of the 18th century.

One might also note that Tom Paine envisioned the American revolutionary quest for freedom as a struggle to give expression to many of the principles that were inherent in the Magna Carta. This struggle took place in historical times that "try men's souls" (cf. *American Crisis* … along with the souls of women and children of all races), but during the foregoing struggle, there did not seem to be much thought given to the principles inherent in the Charter of the Forests since pretty much everyone in Colonial America – including the so-called Founding Fathers and Framers of the Constitution -- pursued a course of action that served their own narrow interests as a function of private property and, therefore, matters were often considered that were removed from whatever problematic consequences their actions might have for others – in the present or in the future -- with respect to being able to have access to, or make use of, the Commons.

The people of the United States – both before and after 1787 – consisted of individuals who, for the most part, were interested in developing commerce. Commerce – whether considered at the level of nation, state or the individual – was about reducing the Commons and its resources to parcels of private property (even if publically held) that could be bought, sold and used in ways that developed spheres of control concerning both people and the Commons, and, consequently, there was virtually nothing in the idea of commerce or private property that resonated with the underlying spirit of the Charter of the Forests in which the lands and resources of the Commons might be subject to a process of commoning rather than a process of private property-based commerce.

Virtually everywhere in Colonial America, indigenous peoples were being increasingly dispossessed of their access to the Commons. Furthermore, women, slaves, indentured servants, and poor commoners were legally and institutionally marginalized in an array of ways with respect to having ready access to what, presumably, should have been equally available to all with respect to the Commons.

Moreover, principles inherent in the Magna Carta didn't necessarily easily extend to anyone but certain classes of white males or did so in ways that afforded some white males an advantage over other classes of human beings – including poor, white commoners as well as white indentured servants. Just as indigenous peoples, women, slaves, indentured servants, and the poor in Colonial America were largely excluded from the rules and laws that governed disposition of the 'Commons', so too, many of the same sorts of individuals (e.g., women, indigenous peoples, slaves, etc.) often were permitted to fall beyond the protection of the principles inherent in the Magna Carta that were being instituted, in one form or another (e.g., bills of rights), as law in various colonies.

The principles inherent in Magna Carta and, especially, in the Charter of the Forests were never properly worked out in anything more than a surface manner in, for example, the Philadelphia Constitution or even the amended Constitution. The foregoing failure to look sufficiently deeply into issues involving freedom, liberties, rights, and the nature of the Commons has led to 230 years – and counting -- of political, legal and Constitutional wrangling in America.

Consequently, the fledgling American nation pursued a very different road into the future than otherwise might have been the case if the Founding Fathers and Framers of the Constitution had been more deeply committed to their duties of care with respect to those whose lives were being circumscribed by what took place during the Philadelphia Constitutional Convention as well as during the process of Ratification that followed that Convention. Some of the contrafactual possibilities to which allusion is being made in the foregoing claim will be explored in subsequent chapters.

For now, let it be said, that there were many injustices that the Philadelphia Constitution – even with a Bill of Rights – enabled to be perpetrated across several centuries with respect to: People of color, women, indigenous peoples, as well as the poor, and, in addition, the Philadelphia Constitution also enabled a whole set of related problems to eventually surface in conjunction with issues involving: Torture, extraordinary rendition, enemy combatants, domestic surveillance, indefinite detention, and the like. All of the foregoing issues were made possible because many – if not all of -- the Founding Fathers, the

Framers of the Constitution, as well as all too many of their descendents, failed to properly explore, appreciate, and acknowledge the nature or importance of the issues underlying the two charters that had been agreed upon in 13th-century England.

Of course, by saying the foregoing, I am not trying to contend that King John, the barons, and/or the commoners who participated in the gatherings at Runnymede in the early 13th century necessarily had a clear understanding concerning the nature of sovereignty in some fundamental or essential sense … although it is possible that some of the commoners who gathered at Runnymede to help forge the Charter of the Forests might have had a far deeper insight into the nature of sovereignty than the King did. Instead, those who attended the gatherings at Runnymede were entangled in a variety of historical, religious, economic, existential, and political contingencies that had come together to form a crisis that was considered to be highly problematic and required some form of peaceful resolution if rebellion was not to transform into internecine warfare.

A tipping point, of sorts, arose out of the aforementioned existential/historical/social crisis that took the form of the provisions present in the Magna Carta and the Charter of the Forests. Those provisions were concrete in nature and were intended to address specific problems that had arisen over time and that had led to the gatherings at Runnymede.

The foregoing charters were written to give expression to an array of freedoms, liberties and concrete arrangements on which participating parties had reached agreement. However, any deeper questions concerning the possibility that sovereignty might involve a source of freedom, liberty, or rights that was not functionally dependent on contingent circumstances was never really explored.

Instead, everything in the two charters was dependent on what a king was prepared to permit and what his subjects were prepared to accept. The King was granting certain liberties, freedoms, and provisions, but there was no acknowledgment in either of the charters that: Liberties, freedoms, and rights might be independent of what any given king was willing to grant to subjects or what a given group of subjects was prepared to accept.

If an understanding of sovereignty in some sort of fundamental or essential sense had been present at Runnymede, the Magna Carta would not have been restricted in scope and, thereby, would not have encompassed a set of freedoms, liberties, and rights that were intended to be enjoyed by just a group of barons who had been in open rebellion against the King. Indeed, if a clear understanding concerning the nature of sovereignty in some fundamental and essential sense had been present at Runnymede, then, the same sort of liberties, freedoms, and rights that had been acknowledged as appropriate for a group of barons would have been considered by everyone present to be appropriate, as well, for all citizens of the realm.

Furthermore, if the idea of sovereignty in some fundamental and essential sense had been a clear driving force behind the two charters of Runnymede, those agreements would not have been written in a manner that couched everything in terms of what the King was prepared to cede in the way of freedoms, liberties, and rights. Instead, if the idea of sovereignty in some fundamental and essential sense had been clearly grasped by those who gathered at Runnymede, then, the two charters would have reflected the possibility that liberties, freedoms, and rights might be a function of something other than what any given king is willing to concede or acknowledge … that liberties, freedoms, and rights might be a function of considerations to which all people are entitled independently of what those in power permit or acknowledge.

Nonetheless, however limited in scope the two charters might have been, they helped to initiate discussions that have reverberated down to today with varying degrees of strength. Those discussions eventually gave rise to insights that liberties, freedoms, and rights might be understood to be a function of what human beings were entitled to as human beings rather than merely being a function of what some form of governance – legal, religious, or institutional -- was willing to bestow upon its citizens.

The next chapter – Chapter 2: Sovereignty -- gives expression to what in mathematics might be referred to as a transform, of sorts, concerning the spirit and principles that I believe underlie, as well as give expression to, the spirit of the Magna Carta and the Charter of the Forests. A transform seeks to provide a means for analyzing how a

given form, structure, dynamic, or network (in the context of the next chapter such a form, dynamic, structure, or network is encompassed by the idea of 'sovereignty') offers a way to reflect, represent, and/or explore various features of some other facet of experience (in the present case this other facet of experience refers to the Magna Carta and the Charter of the Forests) according to a rule, principle, or set of such rules or principles that permit a functional relationship to be established between the aforementioned form, structure, or network (i.e., sovereignty) and that which is being referred to through one's mode of analysis (i.e., the Magna Carta and the Charter of the Forests).

The language of the following chapter might be different from the language that is found in the Magna Carta and the Charter of the Forests. Nonetheless, I believe that the idea of sovereignty -- when delineated in the manner that is outlined in the next chapter -- is at the heart of both the Magna Carta and the Charter of the Forests, and, consequently, gives expression to an essential dimension of the call of the soul … with respect to ourselves as well as in relation to one another.

Chapter 2: Sovereignty

Many people – on all sides of the issue – have been consumed with the: 'Who', 'why', and 'how' of the events on 9/11, but some sixteen years later those questions – however important they continue to be -- are not foremost on my mind. Instead, I am concerned with what the events of 9/11 have set in motion with respect to the systematic stripping of rights, freedoms, and sovereignty that occurred in relation to American citizens, not to mention the millions of individuals who were adversely affected elsewhere in the world due to the unjustifiable collateral damage that ensued due to the political, economic, and militaristic forces that were set loose as a result of the events surrounding 9/11.

Due to a variety of factors, Americans – as well as individuals and communities elsewhere in the world -- have been swindled out of sovereignty by an array of scoundrels both known and unknown. For example, in many respects – and despite claims to the contrary -- America has become a failed nation because none of its essential institutions -- such as the three branches of federal government, the military, the Federal Reserve Bank, the media, or academia -- have, for the most part, done anything to prevent tyranny, oppression, and injustice from conducting a blitzkrieg of America and much of the rest of the world.

While the events of 9/11 helped pave the road to the foregoing sort of dissolution, the problem actually began more than 225 years ago with the coup d'état that was set in motion in the summer of 1787 in Philadelphia when a group of people -- sometimes referred to as the 'Founding Fathers' or 'Framers' -- decided to deprive Americans of an opportunity to work toward establishing something that was far better than what ensued. Those venerated historical figures – who, in my opinion, are largely undeserving of that veneration -- helped to establish a republic, and, unfortunately, from the very beginning they betrayed the idea of a republic by failing to live in accordance with the moral principles of republicanism that are at the heart of the form of governance that was allegedly brought into existence by means of a manipulated process of ratification that was set in motion by an array of Machiavellian partisans who referred to themselves as Federalists (For details concerning the foregoing claims, please refer to: *The*

Unfinished Revolution: The Battle for America's Soul as well as: *Democracy: Lost and Regained*).

The so-called 'Founding Fathers' -- especially James Madison who came up with the Virginia Plan that, to a considerable degree, served as the template for the Constitution – were appalled by the idea of democracy. Among other things, the latter mode of government often tended to oppress minorities (consisting of people from among the ranks of the Founding Fathers and their colleagues) in order to appease majorities who -- from the perspective of individuals such as Madison -- were inclined to operate out of arbitrary, volatile perspectives.

One should keep in mind that the mode of government known as a republic is not necessarily synonymous with the notion of a democracy ... representative or otherwise. A republic is supposed to be grounded in principles of morality that govern the actions of those in authority, while democracy, for the most part, is about determining – quite apart from any issues of morality -- who gets to control what goes on within any given context.

By the mid-to-late 1790s, democracy had overrun republicanism as the form of governance that became dominant in America. One of the signs of that transition revolves about the formation of political parties within America during the last years of the eighteenth century.

More specifically, the whole notion of political parties tends to be inconsistent with the moral principles of republicanism that is given concrete expression in the guarantee present in Article IV, Section 4 of the Constitution. The republican form of government that is guaranteed in the aforementioned section of the Constitution (and it is the only guarantee that is present in the foregoing document) requires people in government to be impartial, objective, and unbiased in their deliberations and, therefore, such a moral philosophy indicates that belonging to political parties – which are inherently partisan in nature -- constitutes a conflict of interest with respect to the ethical duties that are expected of members of the federal government who are supposed to operate in accordance with republican principles of political morality.

Relevant to the foregoing considerations is something that might be referred to as: The *Anaconda Principle*. This notion refers to the way

in which most, if not all, governments – federal, state, and local -- engage in a process of increasingly and progressively squeezing the political, emotional, spiritual, social, educational, economic, and physical life out of citizens over a period of time. More specifically, each time the citizenry exhales in relief from having survived some arbitrary, unjustified, problematic exercise in public policy that was imposed on those citizens by government – and before those individuals can fill their lungs back up with the oxygen of self-determination -- the coils of power become wrapped even more tightly about the people through the next round of arbitrary and unjustified policies that are leashed upon the citizenry.

Since 9/11, we have witnessed the introduction of: The Patriot Act (2001 – plus its reauthorization in 2005 that made many of its provisions permanent); The John Warner Authorization Act (2006); the Military Commissions Act (2006); as well as the National Defense Authorization Acts of 2010, 2011, 2012, 2013 and continuing on. In addition, there have been a slew of Executive Orders (e.g., 10990, 10995, 10997, 10998, 10999, 11000, 11001, 11002, 11003, 11004, 11005, 11921, and more) that authorize the government to control virtually every aspect of American society whenever the government deems this to be appropriate.

The Anaconda Principle is being applied ever more rigorously and persistently to the American people. In the process whatever constructive elements of republicanism and democracy that might still be hanging on for dear life after several hundred years of abuse have been squeezed, for the most part, from political existence.

The following set of principles outline a possible social/political framework of self-governance that goes beyond the possibilities inherent in tyrannies, republics, and democracies. The time for change is upon us, and I believe that the kind of change to which I am alluding – monumental though it might be – can be accomplished peacefully and without violence.

Implementing the idea of sovereignty does not require force. However, that process does require individuals to broaden and deepen their understanding concerning the human condition, and when properly understood, sovereignty has a natural appeal to human

beings because it reflects something that is integral to their own identity and sense of being human.

There is a significant difference between, on the one hand, the ways of power, republicanism, and democracy and, on the other hand, the way of sovereignty. We each have a duty of care to carefully and critically reflect on the nature of the choices we might make with respect to the foregoing possibilities.

The following principles are in response to a question that someone once asked me – namely, "What is sovereignty?"

(1) Sovereignty is indigenous to, and inherent in, the potential of human beings. It is not derived from society or governments but, in fact, exists prior to, and independently of, the formation of society and governments.

Sovereignty is not a destination. Rather, sovereignty constitutes a form of negotiated social space that is necessary for human beings to be able to have the best opportunity through which to come to terms with what it means to be a human being.

(2) Sovereignty is the right to realize essential identity and constructive potential in ways that are free from techniques of undue influence (which seek to push or pull individuals in directions that are antithetical to the realization of sovereignty). At the same time, sovereignty requires individuals to conduct themselves in ways that do not infringe on, or undermine, the right of other human beings to make full use of the opportunities that sovereignty makes possible.

(3) Sovereignty entails the human capacity (and corresponding duties of care) to be able to push back the horizons of ignorance concerning the nature of reality.

(4) Sovereignty encompasses the right of each human being to have ready access to a quality of food, shelter, clothing, education, and medical care that is minimally necessary to seek and, if possible, realize identity and constructive potential through the process of pushing back the horizons of ignorance.

(5) Sovereignty is rooted in the duties of care that are owed to others to ensure that the sovereignty rights of those individuals are established, protected, and nurtured.

(6) Sovereignty is the right to choose how to engage the complex boundary dynamics entailed by the idea of: 'Neither control, nor be controlled' that is at the heart of sovereignty.

(7) Sovereignty entails establishing local councils that constructively establish, promote, develop, and protect principles of sovereignty. When and where necessary, those councils would help mediate disputes that arise along the boundary dynamics involving the principle of: 'Neither control nor be controlled'.

The composition, selection, and nature of the council would be similar to that of a grand jury. In other words, council members would not be elected but chosen through an agreed-upon random-like selection process and, then, those selected individuals would be subject to a vetting process (conducted by the community) to determine the suitability of a given individual for taking on the responsibilities of the aforementioned council … much like prospective jurors go through a voir dire process.

The length of service would be for a limited time (e.g., 6 months to a year) before new members would be selected through the same sort of non-manipulated manner and vetting process that was noted earlier. Like a grand jury, the members of a local sovereignty council would be empowered to investigate whatever issues and problems seem relevant to the issue of sovereignty, but, unlike a grand jury, that council would have the authority to research issues, subpoena witnesses, and present their results directly to the community for further deliberation without having to go through the office of a prosecutor, attorney general, or judge.

(8) Sovereignty is the responsibility of individuals to work toward collective sovereignty, and collective sovereignty is nothing but individual sovereignty writ large.

(9) Sovereignty is rooted in economic activity that serves the principles of sovereignty, not vice versa. Consequently, among other things, this means that corporations should be permitted to exist only as temporary charter arrangements devoid of any claims of personhood, and they should be designed to serve specific purposes that can be demonstrated to be of value with respect to both individual and collective sovereignty. Whatever profits accrue from corporate

activity should be shared with the communities that are affected by corporate activity.

The idea that corporations are persons is nothing but a legal fiction. Yet, this fiction is being advanced as something that should have legitimate standing in the real world.

Legal fictions are stratagems invented by lawyers and judges for dealing with certain legal issues. However, neither the lawyers nor the judges can put forth tenable arguments for why the rest of society should accept, and subordinate itself, to those sorts of fictions.

Sovereignty existed before law came into existence. Law is only constructively effective when it serves the principles of sovereignty, and when law is permitted to enthrall sovereignty – as is done when corporations are treated as persons -- then, sovereignty becomes diminished if not extinguished.

Nowhere do: Congress, Supreme Court Justices, federal courts, corporations and, most importantly, the Constitution, ever put forth defensible arguments about why corporations should be considered to be people. There is no underlying set of principles that justifiably and reasonably demonstrates how such a position – i.e., corporations are people – could be defended in a way that clearly demonstrates, beyond a reasonable doubt, why that sort of a position should be accepted and why sovereignty should become subordinate to the idea of a system of law that is independent of, and not guided by, the principles of sovereignty.

(10) The constructive value of money is a function of its role in advancing the principles of sovereignty for everyone. The destructive value of money is a function of the way it can be used to undermine, corrupt, and obstruct the principles of sovereignty.

Money acquires its value through the service it provides in relation to the establishment, enhancement, and protection of sovereignty. The money-generating capacity of banks should serve the purposes of sovereignty both individually and collectively.

Banks should be owned and regulated by local communities as public utilities. Moreover, whatever profits are earned in conjunction with bank activities should be reinvested in the community.

(11) Capital refers primarily to the constructive potential inherent in human beings and only secondarily to financial resources. The flow of capital (in both human and financial terms) should serve the interests of sovereignty for individuals and the collective.

(12) Sovereignty is not a zero-sum game. It is about co-operation, not competition.

(13) Sovereignty is rooted in the acquisition of personal character traits involving: Honesty, compassion, charitableness, benevolence, friendship, objectivity, equitability, tolerance, forgiveness, patience, perseverance, nobility, courage, kindness, humility, integrity, independence and judiciousness.

(14) Sovereignty is not imposed from the outside in but is realized from the inside out by means of an individual's (and the collective's) struggle to come to grips with the meaning of the idea of: 'Neither control nor be controlled'.

(15) Sovereignty is rooted in struggling against: Dishonesty, bias, hatred, jealousy, greed, anger, selfishness, intolerance, arrogance, apathy, cowardice, egocentrism, duplicity, exploitation, and cruelty.

(16) Sovereignty is the process of struggling to learn how not to cede one's moral and intellectual agency to anything but: Truth, justice and character in the service of realizing one's identity, and constructive potential, as well as in the service of assisting others to realize their identity and constructive potential.

(17) Sovereignty can never be defended, protected, or enhanced by diminishing, corrupting, co-opting, or suspending the conditions necessary for the pursuit, practice, and realization of sovereignty. Sovereignty should not be subject to the politics of fear.

(18) Sovereignty is rooted in the principle that no person can represent the sovereign interests of another individual unless the sovereign interests of everybody are equally served at the same time.

(19) The activities and purposes of: Governments, nations, institutions, and corporations should always be capable of being demonstrated -- beyond a reasonable doubt – to be in the service of the sovereignty of the people, taken both collectively and individually. This requires transparency of process on a variety of levels.

(20) Centralization should not be the default position through which individuals interact with one another. Whenever doing so can be demonstrated to serve the interests of sovereignty, de-centralization should be given priority, and only in very limited, temporary instances – if at all -- should some form of centralization be given preference over the idea of decentralization.

(21) Efficiency and wealth should be measured in metrics that are a function of sovereignty and not ways of power.

(22) The principles of sovereignty should be rooted in the notion of sustainability. Therefore, those principles should not be pursued or realized at the expense of endangering or destroying the environment ... either with respect to either the short term or the long term ecological health of the environment … both for human beings as well as in conjunction with other species of life.

(23) Sovereignty is rooted in the cautionary principle. In other words, if there is a reasonable doubt about the safety, efficiency, judiciousness, or potential destructive ramifications of a given activity, then that activity should be suspended until a time when those doubts have been completely, successfully, and rigorously addressed.

(24) The defense of sovereignty is best served through the co-operation of de-centralized communities of sovereign individuals ... with only occasional, limited, and secondary assistance from centralized institutions and groups.

(25) Standing armies do not serve the interests of sovereignty but, rather, serve the interests of the bureaucracies that organize, fund, equip, and direct those standing armies. Being able to defend one's country and communities from physical attack does not require standing armies but, instead, requires sovereign individuals who understand the value of defending the principles of sovereignty that help a community and network of communities to flourish.

(26) The police should not be considered to be law-enforcement officers but should serve as guardians and protectors of sovereignty – both individually and collectively. In many respects, systems of law tend to serve the interests of the ways of power and, therefore, tend to operate in opposition to the ways of sovereignty.

(27) When done correctly, the practice of sovereignty creates a public space or commons that is conducive to the pursuit and realization of the principles of sovereignty by everyone who is willing to struggle toward that end.

(28) Sovereignty is rooted in the principle that the commons – that is, the resources of the Earth, if not the Universe – cannot be proven, beyond a reasonable doubt, to belong to anyone. Therefore, the commons should be shared, conserved, and protected by all of us rather than be permitted to be treated as individual, institutional, corporate, or government forms of private property.

What is being proposed in the foregoing paragraph is neither a form of communism nor socialism. Communism promotes the idea that the means of production are owned by the people, whereas socialism proposes that production should be done in accordance with some form central, government controlled planning for the benefit of all citizens.

If no one can prove – beyond a reasonable doubt – that they are entitled to the resources and lands of the Earth – or specific portions thereof -- then, neither the proletariat nor a central government is justified in claiming ownership of anything, nor are they justified in claiming the right to determine how lands and resources should be used.

Human beings do not own the Earth. At best, human beings have a fiduciary responsibility to the Earth and its inhabitants, and, therefore human beings must engage the Earth like someone would do if that individual were to chance upon resources of unknown provenance.

(29) Whatever forms of private property are considered to be permissible by general consensus, that property should serve the establishment, enhancement, and protection of the principles of sovereignty … both individually and collectively.

(30) All business must be conducted with the idea of helping to establish, promote, or protect sovereignty. All businesses must be conducted from the perspective that since no one is capable of successfully demonstrating -- beyond a reasonable doubt – that they have the right to ownership for the land and resources of the Earth, then all business arrangements are temporary and subject to the

consensus agreement of the community concerning the potential of that sort of a business to serve the interests of sovereignty.

Aside from what is necessary to operate a business in an effective and productive manner, as well as what is necessary in the way of resources to be able to improve that business through research and development, and/or is necessary to provide a fair return for the employees of such a business for their collective efforts, then any profits that are generated by a business should be shared with the community or communities in which that business resides. The shareholders of a business should always be the entire community in which a business is located and not just a select number of private shareholders.

In exchange for the foregoing kind of arrangement, there should be no taxes assessed in conjunction with business operations. At the same time, both businesses and the community become liable for whatever damages to individuals, the environment, or the community (or other communities) that are adversely affected by the activities of those businesses.

(31) A market in which all of its participants are not sovereign individuals is not a free market. Markets that exploit the vulnerabilities of participants are not free. Markets that are organized by the few in a way that undermines, corrupts, or compromises the principles of sovereignty are not free.

Markets in which the participants are all equally sovereign are free. Nonetheless, the freedom inherent in those markets should serve the interests of sovereignty for those individuals who are both inside and outside of those markets.

(32) Sovereignty is only realizable when it is rooted in a collective, reciprocal, guarantee that we will all treat one another through the principles of sovereignty.

(33) Violations of sovereignty are an impediment to the full realization of the principles of sovereignty. However, those violations should not primarily or initially be subject to punitive forms of treatment.

Instead, violations of sovereignty should be engaged through a process of mediated, conflict resolution and reconciliation intended to

restore the efficacious and judicious functioning of sovereignty amongst both individuals and the collective. This mediated process is, first and foremost, rooted in a rigorous effort to determine the facts of a given situation before proceeding on with the process of mediation, conflict resolution, or reconciliation.

A community has the right to defend itself against individuals who violate and show a disregard for, the sovereignty rights of the members of that community. The aforementioned right to self-protection might assume a variety of forms of negotiated settlement between a community and those who undermine the principles of sovereignty within that community or with respect to that community.

(34) Alleged scientific and technical progress that cannot be rigorously demonstrated -- beyond a reasonable doubt -- to enhance the pursuit and realization of principles of sovereignty in conjunction with others – both individually and collectively -- is subject to being governed by the precautionary principle.

(35) Sovereignty is not a form of democracy in which the majority rules on any given issue. Rather, sovereignty is a process of generating consensus within a community that can be demonstrated, beyond a reasonable doubt, to serve the sovereignty interests of everyone.

(36) Sovereignty is rooted in the principle that before making a community decision concerning any given practice, then that community should take into consideration what the impact of that practice might be with respect to generations seven times removed from the current one.

(37) Everyone should underwrite the costs of pursuing, establishing, enhancing, realizing, and protecting sovereignty -- both individually and collectively -- according to his or her capacity to do so.

(38) Sovereignty is not a function of political maneuvering, manipulations, or strategies. Rather, sovereignty is a function of the application of: Reasoned discussion, critical reflection, constructive reciprocity, creative opportunities, and rigorous methodology in the pursuit of pushing back the horizons of ignorance and seeking to establish, enhance, realize, and protect sovereignty, both individually and collectively.

(39) Sovereignty is not about hierarchy or leadership. Advisors and technical consultants who are capable of lending their expertise and experience to a given project that serves the interests of sovereignty in a community are temporary facilitators whose responsibilities do not extend beyond a given project or undertaking. Those facilitators often tend to arise in the context of a given need and, then, are reabsorbed into the community when a given need has been met.

(40) Education should serve the interests of establishing, developing, enhancing and protecting the principles of sovereignty – both individually and collectively – and not serve the interests of the way of power. Education should not use techniques of undue influence that push or pull individuals toward accepting, or rejecting, specific philosophical, political, economic, or religious perspectives.

(41) To whatever extent taxes are collected (and the issue of taxes needs to be considered and justified – to whatever degree this can be accomplished -- in a critically, rigorous fashion), then those taxes should be assessed only on a local basis and only after all sovereignty needs of an individual for a given period of time have been addressed. Those taxes should be proportional -- within generally agreed upon specific limits -- to a person's capacity to pay those taxes without undermining a person's ability to fully pursue realizing the principles of sovereignty.

Whatever taxes are collected can only be used in conjunction with projects of which the individual taxpayer approves. Disputes concerning the issue of taxation should be handled through mediated discussions and not through punitive or coercive policies.

The foregoing statements of principle concerning the idea of sovereignty mark the beginning of the exploratory process, not the end. We all need to critically reflect on the foregoing set of principles because what we have today is working for just a very small number of individuals that follow the way of power and, as a result, seeks to prevent people in general from being able to pursue, establish, enhance, realize, and protect the principles of sovereignty,

Sovereignty is not something new. As pointed out in Chapter 1, the idea of sovereignty has been inherent in human beings for a very, very long time, but, unfortunately, as events have demonstrated again and again for thousands of years, people's aspirations for sovereignty have been thwarted persistently and rigorously by the way of power at nearly every juncture of history.

A person can commit one's moral and intellectual agency to the cause of sovereignty or an individual can cede that moral and intellectual agency to those who belong to the power elite – economically, militarily, socially, intellectually, politically, and religiously. A great deal hangs on the nature of the judgments one makes with respect to the issue of how one decides to cede one's moral, intellectual, and spiritual agency.

Everything that follows in this book should be weighed against the idea of sovereignty that has been outlined in the foregoing. For example, the discussion in the next chapter will explore, among other things, the idea of republicanism, and republicanism – when properly delineated -- has the potential to constitute an important tool in the pursuit of sovereignty, but, unfortunately, republicanism, like the notion of sovereignty, has been pushed aside by those whose interest is power and who have used the dynamics of democracy to ensure that neither republicanism nor sovereignty is ever instituted for the benefit of the generality of citizens.

Chapter 3: Republicanism

Alexander Hamilton thought that the notion of republicanism encompassed a variety of meanings. John Adams wasn't sure whether the term referred to anything of a determinate nature.

Yet, the only guarantee given in the United States Constitution comes in Article IV, Section 4 in which the federal government guarantees every state a republican form of government. So, if republicanism can have a variety of meanings or, perhaps, no definite meaning at all, why was a republican form of government being guaranteed to every state?

According to some thinkers, republicanism – and, for the moment, let's leave this term undefined until the latter part of this chapter -- gave expression to a "form of life". It could not be reduced down to just a framework for government but encompassed a way of engaging life.

Some historians (e.g., Gordon Wood) believe that republicanism and republican principles were responsible for the demise of monarchical society. However, according to those historians, the dissolution of the latter kind of society didn't happen all at once, but, rather, it took place throughout the 18th century and the transition arose through a variety of historical and social events.

Monarchy was steeped in a web of hierarchy, paternalism and dependency. Over the course of the 18th century, republicanism supposedly led to the desacralization of that web.

For example, republicanism induced people to reflect on the nature and importance of individuality. As a result, republican principles undermined established notions of hierarchy, patriarchy, systems of patronage, and dependency.

According to some historians, there were no real economic causes such as poverty or class struggle that gave rise to the American Revolution. More specifically, relative to the rest of the world, and relative to the their previous situations in their lands of origins, the vast majority of people in the Colonies were freer, more prosperous, and enjoyed more degrees of equality with respect to other inhabitants in the Colonies than had been the case prior to coming to America, and, in fact, those relative advantages helped lay the basis for inducing individuals in America to re-consider their place in the

scheme of things and, as a result, served as something of a catalyst for colonists wanting to seek to retain those conditions of relative social, economic, or political advantage and, if possible, improve upon them.

The principles of republicanism – at least as far as those individuals were concerned who were persuaded by that perspective -- led to large-scale changes in how people thought about life, the individual, family, society, and government. For those who, allegedly, were enamored with republican principles, issues such as: injustice, racism, exploitation, inequality, and so on were all perceived to give expression to abuses of government, and, furthermore, if one wished to eliminate those sorts of problems, then one had to bring about a different form of government.

Those who operated out of a republican perspective believed that in order to change society, one had to change the form of government. However, willingness to set about changing the current form of government, presupposed a change of understanding concerning the nature of the relationship between individual and a variety of social institutions.

In 1760, most people in America accepted the idea of social relationships that were immersed in conditions of: Monarchy, paternalism, hierarchy, patronage, inequality, and the like. Less than fifty years later, many people in America had jettisoned that set of ideas and, instead, were seeking to realize a very different way of engaging in social, political, and economic relationships … relationships that were freer, less hierarchical, more egalitarian, and less entangled in dependency relationships.

Allegiance … loyalty … fealty … Divine right of lordship … stability … order … power … superiority … patronage, and social position were all part of a fiduciary sense of duty concerning individual responsibility that were at the heart of monarchy. The foregoing set of forces framed and regulated how individuals, society, culture, and government operated.

In monarchy, the king/queen was the head of the social family. Subjects were his or her dependents who were treated in accordance with the likes and dislikes of the monarch at any given time.

The king/queen was strong and powerful. Subjects were weak and powerless.

Power was the basic form of currency. It was loaned out at interest by the monarch to those who were willing to serve the interests of monarchy.

Prior to War for Independence, many of the Colonists didn't consider themselves to be American, but, instead, they thought of themselves as British subjects. However, in those days, the English were renowned throughout much of the West for being insolent and insubordinate toward authority – irrespective of whether that authority was religious, economic, or political in nature.

Therefore, unlike the well-ordered and established ways of doing things culturally, socially, economically, religiously, and politically that were present in Europe in 17th and 18th century Europe, the relatively isolated conditions (geographically, socially, economically, and politically) that were present in the Colonies were conducive to nurturing the aforementioned tendency in those from England toward insolence and insubordination. As a result, in Colonial America the cultural inclination of many English people with respect to being insubordinate and insolent toward authority began to manifest itself by means of different forms of resistance and rebellion in relation to various facets of the entire fabric of society in which monarchy was rooted.

Nonetheless, as noted earlier, the foregoing transformation did not take effect right away. In the early-to-middle portion of the eighteenth century, the same sort of educational and cultural background framed the understanding of large segments that encompassed the elite aspects of Colonial America.

Many colonists were familiar with the same books and thinkers. Consequently, important facets of Colonial America shared in a common heritage concerning: Literature, law, philosophy, history, and science.

As a result of this shared cultural heritage, they tended to operate out of the same sorts of sensibilities concerning how to engage life. This included their sense of propriety, manners, and morals.

On the one hand, most English men and women could not vote, and, therefore, had no say in governance. On the other hand, due to the precedents that had been established in the 13th century as a result of the Magna Carta as well as the Charter of the Forests, most people in England enjoyed, to a considerable degree, a form of liberty that was firmly rooted in an array of rights involving speech, thought, travel, trade, and legal trials that were carried into the New World.

Unfortunately, the aforementioned fabric of freedom and liberty were embedded in, and subsidized by, a social/cultural framework that was infused with monarchist sentiments along with the sort of hierarchal and dependency arrangements to which those sentiments gave expression. Consequently, English citizens suffered from a strange sort of affliction in which they were simultaneously both free and not free.

Prior to the Revolutionary War, Colonial governors, leaders, educators, lawyers, and judges tended to be loyalists with respect to the legal, cultural, economic and political currents that were operative in England at the time. This sort of orientation tended to inform and shape many of the activities and institutions that were present in Colonial society.

In addition, despite the presence of a certain amount of piracy and smuggling in the Americas, the vast majority of economic activity took place above board, so to speak, and was done in conjunction with British laws governing trade, shipping, and the like. As a result of the Franco-Anglo hostilities that took place in America during the 1750s, many people in the Colonies were aligned with Britain, and a great deal of British money and resources found their way into the Colonies to foster and support that sort of an alignment.

Religious leaders, institutions, and congregations were proliferating in America throughout the eighteenth century. Whatever religious differences might exist among those leaders, institutions, and congregations, they all seemed to accept – at least during the first half of the 18th century -- the idea that individuals should exhibit deference toward, and obedience to, the leaders who, supposedly, had been placed in authority over them by means of Divine decree (For many, this was an unquestioned assumption rather than a proven fact).

Moreover, religious issues aside, other kinds of hierarchical influences also shaped and organized much of pre-1750 Colonial society. For example, one's military rank had ramifications for social status, and what one did for a living also shaped how other people perceived one's value and place within society.

People tended to accept the idea that society was a complex mechanism with many moving parts. Moreover, each person understood that he or she was tasked with the challenge of trying to find a role and a place within that dynamic process, but, as well, they also understood that the role and place one found tended to carry a pre-determined value as far as other members of society were concerned.

The value that was assigned to an individual as a result of the role and place that the latter person chose (or which was selected for that individual by family or fate) would determine, to a large degree, how one was supposed to interact with other members of society. Behavior was a function of whether the other person with whom one might be interacting was considered to be above or below one in the social hierarchy as a function of the value that had been assigned to various parties through cultural assessments based on considerations related to nobility, wealth, social status, origins, marriage, and so on.

Before the Revolutionary War and even during that latter period of conflict, nobility, gentlemen/ladies, and the common people constituted three groups that made up society. Within each of the foregoing broad groups, an array of value distinctions arose through which all of society became hierarchically arranged.

Thomas Jefferson believed that commoners should not be included in any assessment of national character. Alexander Hamilton looked down on commoners as an unthinking lot.

John Adams – another one of the so-called "Founding Fathers" -- considered the common people to be without learning, insight, or eloquence. Gouverneur Morris – one of the so-called "Framers" of the Constitution – had come to the conclusion that commoners had a sense of morality that was entirely a function of their personal interests, and this was a perspective that overlapped with the opinion of, among others, James Madison … an opinion that Madison developed as a result of his experiences in Virginia politics as well as in conjunction

with the many problematic machinations that took place during various activities associated with the operations of the Continental Congress.

For many, if not most, of the leaders during the period leading up to, and including, the Revolutionary War, only those who populated the ranks of nobility/aristocracy or who were considered to be gentlemen possessed the kind of minds, virtues, and ambitions that were capable of guiding society along the paths of righteousness. Aristocracy and gentlemen were individuals of character.

Commoners, on the other hand, possessed no character. At least this seemed to be the opinion of many of those who, as a result to their arbitrarily determined sense of status, perceived society through the lenses of the viewing glasses that were constructed from their so-called aristocratic or gentlemanly qualities.

Parentage, manners, wealth, property, dress, aesthetic sensitivities, classical learning, and the sort of activities (e.g., reading, dancing, socializing, traveling) that were pursued by a person determined who was, and was, not a gentleman. Character was, to a considerable degree, considered to be a function of birth. Thus, character did not seem to something an individual needed to forge through a constructive fashion that required an individual to struggle with the difficulties of life.

Furthermore, it was the task of aristocrats and gentlemen to consume. It was the task of commoners to produce objects and services that were consumable.

Out of the goodness of their hearts, aristocrats and gentlemen consumed in order to provide the poor with a means of livelihood (i.e., providing commodities and services for the well-to-do). If the poor were not poor and, therefore, had no need to be provided with a source of livelihood by aristocrats and gentlemen, then, according to the members of nobility and the gentlemanly class, commoners would fall prey to their inherent laziness and would lead lives of purposeless idleness.

As long as one worked to earn money in order to survive, then one was a commoner. If one wished to be a gentleman, then, whatever activities one pursued could not be done for the sake of money but had

to be a function of some other sort of non-financial motivation, and, consequently, any form of monetary remuneration that arose from those ventures had to be purely incidental, if not superfluous, in nature.

Aristocracy and being a gentleman were about being independent from dependency. To rely on trade and commerce in order to survive were considered to be forms of dependency that were antithetical to the life of an aristocrat or gentleman.

Being engaged in trade – especially retail trade – was considered to be inconsistent with being a gentleman. Trade was steeped in dependency relationships, and, as far as aristocrats and gentlemen were concerned, perhaps an even more problematic aspect of trade is that the aforementioned classes of individuals believed trade gave expression to a person's desire to pursue one's own interests quite apart from what might be considered to be for the good of society in general (and, of course, this assumes that aristocrats and gentlemen knew what was good for society).

Owning an estate was consistent with aristocracy and being a gentleman. However, individuals other than the owner must do the work of an estate … that is, work must be done by those who were dependent on wages in order to be able to survive.

Working with one's hands ran contrary to the life of an aristocrat or gentleman. In addition, working out of necessity, rather than as a result of free choice, removed one from the ranks of being a gentleman.

Because, to a considerable degree, the sort of legal titles that identified aristocracy in Europe were not present in Colonial America, being perceived as a gentleman – rather than a member of the nobility -- seemed to be the best gateway capable of opening one up to the upper echelons of American society. Among other things, if one had the reputation of being a gentleman, then one would enjoy access to forms of financial credit and preferential treatment that were not available to commoners.

To be a gentleman meant that one had social credibility. With that sort of credibility came an aura of authority, and, as a result, one's opinions carried weight.

To be a gentleman was to be perceived as a person of honor. Gentlemen supposedly did not act from personal interest or due to lowly appetites but, instead, acted out of a sense of moral and social propriety concerning any given issue.

Gentlemen were individuals of conscience. Honorable ambitions were not to be confused with the morally questionable ambitions of commoners and merchants.

Gentlemen were people of their word. Gentlemen were honest and trustworthy.

If one were not a member of the aristocracy or a gentleman, one was a member of the vulgar, common mob and did not possess honor. Freedom meant something very different depending on the side of the foregoing cultural divide in which one was ensconced.

To be a gentleman was to acknowledge, and accept, the system of hierarchy that governed society, in general, as well as that generated the social gradations that characterized the relationships among gentlemen. On the one hand, Kings/Queens, nobility, and their appointees constituted the overarching leaders of society, while, on the other hand, gentlemen and the families of which they were heads, were the localized representatives of law and order.

Monarchy was family writ large. Just as one owed one's fealty to the ruling monarch (and all the relationships of superiority and inferiority that this entailed), so too, one owed one's fealty to the patriarch of one's own family (and all the relationships of superiority and inferiority that this entailed).

In monarchy, blood and marriage helped shape society. In Colonial America, blood and marriage also organized a great deal of society quite apart from issues of nobility.

In pre-revolutionary America, many local and provincial governments tended to be operated through a web of direct and indirect monarchical influences. In other words, a great deal of the fabric of governance involving legislation, common law, judges, policing, military leadership, and the like were a function of monarchical-based family ties.

Blood and marriage – whether in terms of monarchy or family -- tended to create a network of obligations and rights. Law and

governance were often a reflection of that network of obligations and rights.

Furthermore, commerce and trade also tended to be a function of the aforementioned network of obligations and rights. Family came first with respect to that kind of network.

However, women, children, and slaves (both indentured and otherwise) were considered to be chattel within the context of the foregoing network. Tens of thousands of white men and women came to America as indentured servants, while there were a half million, or more, black men and women who had been brought to America to service the gentlemen's club that been made possible through monarchy, blood and marriage.

Unlike England, American colonists – at least those in power – passed legislation that circumscribed the movement of servants. In addition, there were legal and cultural protocols that governed problems involving run-away servants of whatever description.

Servants could not buy, own, or sell property unless their masters agreed to those kinds of transactions. Furthermore, without permission, servants could not marry.

Servants could be bought, sold, and rented. They could serve as a form of payment for unpaid debts of their masters, and, in addition, they could be bequeathed to other individuals in wills.

To some extent, indentured servitude gave expression to a less onerous and, generally, less permanent condition than being a slave. Nonetheless, the treatment of servants and slaves was governed by many of the same restrictions and, consequently, many people in Colonial America accepted the idea that, under certain conditions, both black and white people could be controlled and considered as inferior species of human beings.

The web of hierarchical relationships governing servants and slaves were of one kind, while the web of relationships governing gentlemen were of another kind. Nonetheless, in each case, those relationships were infused with qualities of dependency of one variety or another.

Arrangements of: Mutual assistance, reciprocal allegiances, exchanges of favors, and the requirements of etiquette were often a

function of the dynamics of patronage relationships that governed the world of gentlemen and also divided that world into those who were superior and those who were less so. Dependency created a network of ties marked by obligation and loyalty.

The appointment of: Military officers, judges, sheriffs, clerks, justices of the peace, and officials were all a function of the foregoing sort of dependency networks. Those networks were designed to control events – as much as this could be done -- in a manner that benefitted those who controlled the way things were done.

Consequently, no one was truly independent. Patrons needed their clients as much as clients needed their patrons.

To whatever degree Colonial America was entrenched in monarchy-infused networks, then, governance was a matter of adjudicating and controlling matters to serve the interests of the monarchy. As Americans sought to become independent of networks dominated by monarchy, gentlemen used their reputations and concomitant influence to establish a new set of dependency relationships – economically, militarily, legally, and politically – that might prove to be beneficial to adjudicating and furthering the interests of gentlemen within America … but those dependency relationships might not necessarily serve the interests of the commoners who constituted the greatest portion of the population in America.

To a great extent, Colonial economics was largely governed by personal relationships. A person tended to do business with those who were known to that individual.

Despite the mercantilist assumptions that shaped a great deal of colonial economics -- in which the goal was to export more than was imported and, thereby, enhance the overall wealth of society -- many well-to-do individuals in the colonies increased their fortunes by extending credit – in various forms – to other individuals within their communities. The goal underlying that activity was not only to become as independent of the vagaries of trade as one could but, as well, to develop a network of dependency obligations and allegiances through that process of extending credit.

People's reputations were enhanced or diminished according to how they fit into the foregoing sort of network of obligations and allegiances. Community influence tended to be a function of the foregoing kinds of network dynamics.

As a result, the law in local communities was often rooted in the arbitrary likes and dislikes of those who wielded influence within those localities. As such, law and order were functions of the influence wielded by reputation rather than being a function of well thought out legal systems that were capable of being defended independently of a web of reputations and associated influences

In Colonial America, the source of reputation and influence were, in many ways, a matter of one's connections within the network of monarchy that had been exported to the New World. However, over time, the wellsprings of reputation and influence shifted from the degree to which one was ensconced in the web of monarchy and became a function of how and where one fit into the web of colonial and continental revolutionary politics and economics.

The constitution that came out of 1787 Philadelphia was, to a large extent, a work of reputation and influence. For example, with the exception of the guarantee of republican governance that was set forth in Article IV, Section 4, in many ways the Constitution was not a document that was rooted in first principles of law and governance that had demonstrable value independently of the reputations of those who were constructing that document but was, instead, a document that gave expression to the likes and dislikes of the people who were producing that document.

Leaders in Colonial America were people of high community standing and good reputation. Social distinctions were the basis of political authority.

Thus, social standing and reputation were used to leverage political authority. Political authority was rooted in the idea that the common people should be willing to acquiesce to, and be guided by, the social – and, therefore, legal and political – influence associated with those individuals who possessed standing and reputation.

Commoners were bereft of power and did not possess the social connections that might be conducive to furthering their interests.

Commoners were perceived to be without the sort of reputation and concomitant social influence that could serve as a basis for political authority.

Consequently, those who were members of the gentleman's club considered themselves to have an obligation to serve those who were without power. Moreover, public service was to be done without thought of recompense and was often considered to be a burden that must be borne by the elite.

Order, stability, and authority within society were all considered to rest upon a foundation of social and moral respectability. If individuals with the wrong sort of character were placed in, or assumed, positions of authority, then gentlemen believed that social order and stability would disappear.

In many ways, the Revolutionary War was a clash over which network of reputations and social influences were to govern America. More specifically, should a web of reputations and social influences that were ensconced in a monarchist network determine who governed the colonists – most of whom were commoners -- or should governance be entrusted to a group of individuals whose reputation and social influence was independent of monarchy?

As noted toward the beginning of this chapter, according to Gordon Wood, the network of monarchal ties that were rooted in relationships of dependency, hierarchy, and patronage were destroyed during the 18th century, and, in the process of disintegrating, the realm of monarchy supposedly was replaced by a society that was characterized by qualities of democracy, capitalism, and liberalism. Unfortunately, that realm of alleged democratic, liberal and capitalistic values fostered its own set of influences that were built around relationships of dependency, hierarchy and patronage.

Monarchy might have dissipated. Nonetheless, it was replaced by a system that was just as rooted in issues of control and power as monarchy had been.

Wood is right -- a transformation had taken place within American society during the eighteenth century – especially during the latter part of that century. Yet, that transformation was about the form or framework through which power, control, dependency, hierarchy, and

patronage would be realized rather than being about the acquisition of sovereignty by the vast majority of American people.

Supposedly, republican values and principles undermined the values and principles that glued together monarchical society. In reality, one system of control, hierarchy, dependency, and patronage was replaced by another such system.

Through the influence of republican values, principles, and behavior, the class origins of the individuals who could occupy the apex of power might have undergone a transition from those who constituted nobility to those who made up the set of gentlemen in America, and, furthermore, while the rules of the power/control game that arose during the latter part of the eighteenth century in Colonial America might have undergone a substantial set of changes – that is, from the rules governing monarchal societies to the rules governing societies rooted in democracy, liberalism, and capitalism -- nevertheless, something very important had not changed. More specifically, irrespective of whatever the origins of those who governed might be and whatever the nature of the rules might be through which governance was realized, the process of governance was still a matter of one group of people (nobility and or gentlemen) assuming that they were entitled to control and exercise authority and power over other individuals (commoners and merchants).

Just prior to the mid-point of the eighteenth century, Charles Montesquieu (born Charles Louis de Secondat) released *L'Esprit des lois* (*The Spirit of the Laws*). Among other things, that work gave expression to the idea that: Executive, judicial, and legislative powers should operate through separate spheres of influence.

Montesquieu believed that many countries in Europe already involved a mixture of republican and monarchal perspectives concerning both the nature of governance, as well as the engagement of life in general. He further believed that a transition to a more republican form of government involving a tri-partite system of power sharing might be most conducive to the realization of liberty, both individual and collective.

During the eighteenth century, those who were committed to the idea of monarchy often implemented republican values and principles to give expression to the foregoing sort of orientation. At the same

time, many of those who were seeking some form of governance or manner of organizing society that was non-monarchal in character were also inclined to operate out of a republican perspective.

Republicanism was at the heart of the Enlightenment. The Enlightenment involved an interest in the thoughts, values, ideas, principles, and behavior of leaders in classical republics such as: Rome, Sparta, and Athens.

Republicanism encompasses the way of life to which classical republics seemed to give expression and that was elucidated in the works of, among others, Virgil, Tacitus, and Cicero. Enlightenment republicanism became a modality of thought that was used by poets, essayists, and philosophers to critique society, governance, economic activity, banking, and a variety of other 17th-18th century institutions.

Republicanism advanced ideals such as: Selflessness, liberty, meritocracy, integrity, and modest modalities of living. Consequently, those who were enamored with republican ideals criticized instances of: Selfishness, tyranny, unearned status, corruption, and profligacy that populated much of the social, political and economic landscape of 17th and 18th century life in Europe and Colonial America.

Republicanism held that, in essence, human beings were political beings. Furthermore, republicanism maintained that the best way to realize that dimension of being human was through participating in governance through virtuous means.

Among other things, to be virtuous meant that an individual had to be free of any sort of dependency that might corrupt the nature of one's participation in governance. By being virtuous – that is, by being willing to sacrifice one's personal interests for the good of the community -- an individual secured liberty for oneself as well as for others.

The primary form of dependency from which republicanism sought to distance an individual had to do with trade and the marketplace. To whatever extent an individual was dependent on commerce in order to survive, then, from a republican perspective, that person's capacity for acting in a disinterested manner was corrupted and, therefore, the liberty of everyone affected by such commerce was placed at risk.

However, to hold fast to the foregoing sort of disinterested orientation required a variety of ancillary qualities. If one lacked: honesty, nobility, courage, honor, integrity, perseverance, selflessness, and compassion, then, one would be unlikely to be able to achieve, or remain committed to, a sense of disinterestedness concerning the nature of governance and its alleged republican goal of promoting the liberty and welfare of everyone that was established within the context of any given sphere of governance.

To be disinterested was not a matter of lacking interest in what went on within the process of governance. Instead, to be disinterested was to harbor no personal biases or sense of partisanship concerning the process of governance … especially with respect to the manner in which governance might affect one financially – whether directly or indirectly.

Republican virtue required one to be willing to sacrifice one's personal interests for the benefit of the community, state, or country. Republicanism was about serving – without recompense -- the interests and needs of others so that everyone might have an opportunity to realize (according to their capacity) the fullness of liberty.

Thomas Jefferson's version of republicanism involved the idea of a yeoman farmer who owned property and was self-sufficient – i.e., independent of commercial transactions that involved customers. Yeoman farmers were individuals who relied on their own labor and resources to maintain themselves and their lands.

Commoners did not own their own property. Moreover, they acquired whatever resources they had by hiring out their labor to others or by relying on customers, and, in each case, their lives were governed by the dynamics of dependency and the vagaries of the marketplace.

Therefore, according to the thoughts of people such as Jefferson – as well as many other so-called "Founding Fathers" -- commoners were likely to be overwhelmed by the shifting sands of dependency and marketplace volatility. From the perspective of republicanism, commoners could not be leaders in government because their financial circumstances would undermine any attempt by them to make decisions that were independent of their own dependencies, biases,

partisan views, and personal interests … in short, commoners would be incapable of being disinterested with respect to the manner in which the process of governance supposedly needed to be conducted.

If the leaders of government were virtuous – that is, if they were disinterested in personal gain and committed to securing liberty for everyone – then, according to the republican perspective, institutions, charters, contracts, and civil liberties would arise that could be trusted to serve everyone's interests because the individuals responsible for establishing that form of governance would secure and regulate those possibilities in a completely disinterested, impartial, fair, egalitarian, and non-partisan fashion. On the other hand, if the leaders of government were corrupted by an array of financial and ideological dependencies that undermined their capacity to think, judge, and behave in a disinterested manner, then, nothing in governance could be trusted to serve or advance the welfare and liberty of society in general.

One potential fly in the republican ointment, however, was that very few – if any – individuals in the colonies could disengage themselves completely from economic dependency relationships of one kind or another. In different ways, commerce, trade, or the marketplace filtered into the lives of almost everyone in the colonies and, therefore, such economic and financial forces contaminated disinterestedness with various forms of commercial dependency that were capable of biasing thought, judgment, and behavior in problematic ways … ways that – potentially – might adversely affect the extent to which many people in society might be able to have access to any meaningful sense of liberty, welfare, or justice.

Furthermore, the idea of being disinterested should not be restricted to financial considerations. If the principle underlying governance is that one's judgments cannot be biased and partisan as a way of advancing one's own personal gain by means of this or that instance of political judgment, then, that principle also should extend to all policy matters and not just to issues involving financial matters.

Presumably, if financial dependency concerning the marketplace is a mark of political corruption, then, any form of philosophical, economic, or political affiliation also gives expression to a form of dependency that is capable of adversely affecting the welfare and

liberty of others. One must exercise integrity, impartiality, honesty, fairness, independence, and objectivity in all instances of political judgment – not just financial ones -- in order to exhibit the kind of disinterestedness that a republican form of governance requires of its practitioners.

To tie the quality of being disinterested exclusively to just financial issues and whether, or not, a person -- while serving in the federal government – might use one's political influence and votes as a way of financially benefitting that individual makes no sense. If one must be: Non-partisan, unbiased, impartial, fair, just, objective, egalitarian, honest, noble and, so on, when it comes to whether, or not, one's political behavior will beneficially enhance one's own financial situation, then, an individual should have integrity across the board and be: Non-partisan, unbiased, impartial, fair, just, objective, egalitarian, honest, and noble in all facets of political behavior.

In other words, can anyone persuasively argue that as long as a member of the federal government has integrity with respect to not financially benefitting himself, or herself, by means of that person's government employment, then, it follows that such an individual need not have integrity with respect to other facets of her or his job? Presumably, exhibiting the quality of being disinterested in the republican sense should permeate every aspect of the intention and performance of an employee of the federal government, or guaranteeing a republican form of government to every state becomes empty.

As much as republicanism was dedicated to the idea of liberty, it also was dedicated to all manner of government corruption. Engaging governance through the lenses of republicanism required an individual to be: Disinterested, unbiased, objective, impartial, honest, and egalitarian.

To live in accordance with republicanism, required one to have honor and integrity. Those qualities enabled one to actively stand in opposition to corruption, both personal and governmental.

One might argue that sovereignty – as understood from the perspective of the previous chapter dealing with that topic – is a measure of, or index for, the extent to which a given mode of governance can be considered to be manifesting the quality of being

disinterested in the republican sense of the word. In other words, to advance the sovereignty of one individual, one must advance the sovereignty of all people, and by advancing everyone's sovereignty, one will not be able to enhance one's own interests at the expense of other individuals … and this is the essence of republicanism.

As noted earlier, Gordon Wood maintains that republicanism was one of the primary forces that helped to desacralize monarchy and, thereby, enabled a colonial society that was deeply embedded in a monarchal model characterized by hierarchy, dependency, and patronage to transition into a society that was imbued with qualities of egalitarianism, independence, democracy, and capitalism. I'm not sure that republicanism accomplished the things that Gordon Wood says it did.

For me, a more plausible hypothesis would be to consider the possibility that the network of dependency, hierarchy, and patronage to which the system of monarchy gave expression in Colonial America became transferred to a federalist system of governance that gave lip service to the ideals of republicanism but pursued a very different path. In other words, while the system of monarchy might have been overturned in America during the 18th century, the qualities of dependency, hierarchy, and patronage tended to remain but were refashioned as a federalist form of government that could be used to deprive people of sovereignty … just as monarchy had been used to achieve that same end.

The moral principles associated with republicanism did have the potential to transform society. Unfortunately, that potential was squandered and replaced with a two-tiered system of government (federal and state) that, to a great extent, ignored those principles and, instead, devolved into a game of power musical chairs from 1776 onward.

Quite independently of republicanism, there were a variety of factors that weakened and undermined the influence of monarchy. For example, there were many different kinds of religious affiliation in Colonial America, and, therefore, the influence of the Church of England -- which often served as a surrogate for monarchal interests – tended to be attenuated in America.

Moreover, the population of America was exploding during the second half of the 18th century. For example, the number of inhabitants in Colonial America doubled to two million people between 1750 and 1770, and, then, doubled again to four million people between 1770 and 1790.

To a great extent, this expanding populace was more interested in finding and securing opportunity, land, wealth, and power than it was interested in worrying about its possible responsibilities toward monarchy. As a result, the allegiances of those individuals often were more pragmatically directed toward improving their own financial, economic, and social situation than those allegiances were concerned with the issue of loyalty to monarchy.

Concomitantly, a considerable number of individuals within America migrated again and again as economic possibilities opened up in a country that was expanding westward. These sorts of individuals were consumed with the contingencies of their own changing lives and, consequently, had little time or inclination to think about whatever duties, if any, they might have with respect to the King (Queen) of England or his (her) appointees.

In addition, representatives of nobility were omnipresent in England, but, to a great extent, they were relatively absent in Colonial America. Therefore, much of Colonial America was devoid of the trappings of monarchy, and, as a result, the social, political, and cultural vacuum that existed due to the relative absence of nobility in America was ripe for being dominated by other individuals – namely, the class of gentlemen that was assuming prominence in America.

In many ways, the Constitution of 1787 was a gentleman's agreement that sought to replace monarchy with a form of governance that would replace the class of nobility with members from the class of "gentlemen". That agreement was intended to primarily serve the interests of gentlemen and was intended to prevent commoners from being able to change much of anything in the future.

Once written, the Constitution became something of a fait accompli due to the games of manipulation that were played out during the process of ratification (see: *The Unfinished Revolution* for a more in-depth account of some of the games that are being alluded to in the opening sentence of this paragraph). As a result, the

Constitution began to be understood and implemented in a manner that was the antithesis of republicanism.

For instance, within the context of republicanism, there are only two senses of representation that are capable of being defended. One sense of republican representation has to do with using the influence of one's political office to simultaneously advance the sovereignty interests of all citizens, while the second sense of republican representation is a function of operating in accordance with the principles of republicanism with respect to everything one does.

Consequently, members of a federalist form of government that guarantees a republican species of governance – as the U.S. Constitution does -- cannot represent the interests of individual constituents unless this is done in accordance with republican principles of morality and, as well, unless that representation enables other members of society to be benefitted in the same manner as the constituent being represented (which is, itself, an expression of republican moral principles). This means that a form of federalism that guarantees a republican species of government is not about the idea of majority rules that most people associate with democracy but, instead, is about acting in accordance with republican moral values and principles, and, unfortunately, from 1787 forward, American governance rapidly drifted away from the guarantees of Article IV, Section 4 and became a process in which different dimensions of the Constitution were leveraged to serve the interests of whomever was able to befuddle the American people and acquire the reins of power.

Aside from representational issues, Article IV, Section 4 also requires one to entertain the idea that the Preamble to the Constitution should be filtered through the principles and values of republicanism. Whatever is meant by the notions of: Justice, domestic tranquility, the common defense, general welfare, and liberty, those ideas need to be filtered through a framework of republican morality that is woven together with strands of: Impartiality, non-partisanship, objectivity, honesty, nobility, disinterestedness, integrity, fairness, egalitarianism, and so on, but, to a great extent, the words of the Preamble were reduced to nothing more than a literary flourish at the beginning of the Constitution that was meant to inspire the electorate but were never meant to be realized.

In addition, all of the often cited clauses of the Constitution – such as the "proper and necessary clause", the "commerce clause", and the "supremacy clause" – must be understood in terms of the guarantee of a republican form of government to which Article IV, Section 4 of the Constitution gives expression. If this is not done, then, one can hardly be described as guaranteeing a republican form of government to each of the states, and, to a large extent, the foregoing clauses were never viewed through the lenses of republicanism but were, instead, filtered through the aspirations of power.

Moreover, in order for the guarantee of republicanism to be realized, the duties of the legislative, executive, and judicial branches of government that are outlined in the Constitution must be circumscribed by, and give expression to, the principles or republicanism. In addition, the Bill of Rights must be implemented and regulated in accordance with the moral values and principles of republicanism.

Unfortunately, for the most part, in neither of the foregoing cases, was the promise of Article IV, Section 4 in the Constitution realized. Instead, the different branches of government often just pursued power for self-serving, arbitrary ends.

Even the realm of state's rights -- which, supposedly, encompasses issues that are neither specifically assigned to the federal government nor prohibited to the states -- should operate within a framework of republican governance. More specifically, any actions of a state that affect, or impinge upon, a citizen's right to freely operate out of the sphere of republican governance that has been established through, and, guaranteed by, the U.S. Constitution must be capable of being reconciled with republican principles of governance.

In areas where states are free to act – that is, areas that are neither specifically assigned to the federal government nor prohibited to the states – states are not entitled to act in any way they like. Instead, the guarantee of a republican form of governance in relation to the states means that the federal government has a fiduciary responsibility to the citizens of any given state to ensure that those individuals are treated by the states in a republican manner … even in those areas in which states are entitled to generate their own policies.

However, states' rights were rarely, if ever, considered from a republican point of view. Instead, states' rights were understood in terms of the attempts of one locus of power (the states) to push back against another locus of power (the federal government) in an eternal struggle to determine who got to control the lives of other people – that is, the citizens of the United States.

However, the ninth and tenth amendments indicate that states do not necessarily have primary jurisdiction with respect to any policy areas that are not specifically assigned to the federal government nor prohibited to the states. The ninth and tenth amendments of the Bill of Rights indicate that the citizens of the United States – irrespective of the states in which they reside – have rights and powers that are independent of states, but as is the case with respect to the rights of states, the rights and powers of the people must be exercised in accordance with republican principles of morality.

While a number of the participants in the 1787 Philadelphia Convention were active members of the Continental Congress, and while a number of other participants in that convention had served in the Continental Congress at some point in the past, there were quite a few other individuals who were in attendance during the Constitutional Convention that had never been an active part of the Continental Congress. Why were many – if not all -- current members of the Continental Congress not in attendance at the Philadelphia Convention, and why were many individuals who were in attendance at that convention either not current members of the Continental Congress or had never been members of the Continental Congress?

Patrick Henry had refused his invitation to the Philadelphia Convention because it had the smell of monarchy about it. And, indeed, the idea of a federalist form of central governance is entangled in many of the same problems of hierarchy, dependency and patronage that also swirl about monarchy.

One wonders how committed – actually rather than nominally -- any of the signatories to the 1787 Philadelphia Constitution or the leaders at the various ratification conventions were to the principles of republicanism. For instance, irrespective of whether, or not, the participants to the Constitutional Convention owned slaves, they collectively enshrined slavery into the Constitution and, as a result,

their self-serving judgments and actions adversely affected American history for more than 200 years.

What does enshrining slavery have to do with exhibiting integrity and honor? What does enshrining slavery have to do with qualities of being impartial, unbiased, objective, noble, egalitarian, and the like – that is, qualities that give expression to the very essence of republican values and principles?

George Washington made a big deal of his retirement from public life following the cessation of hostilities in relation to the Revolutionary War. He was lauded throughout the Western world as a man of integrity who, unlike so many past historical figures, had not sought to leverage his military successes in order to become the head of a country, and, yet, a mere four years later, Washington had been seduced into coming out of retirement and lending his name to a cause (a new constitution) in order to bestow credibility upon a group of individuals who were to be associated with that cause.

To live in accordance with republican values, one had to honor one's words. In 1783, Washington, to great fanfare, had said he was retiring from public service, but, in 1787, those earlier words seemed to have little value for Washington.

However understandable Washington's actions might have been from this or that perspective, those actions do not seem to be very republican in nature. By agreeing to participate in the Philadelphia Convention, he was becoming involved in a process in which he was not a disinterested party and from which he stood to derive benefit (e.g., a presidency) … that is, he was serving as a judge in his own cause, and this was antithetical to republicanism.

If Washington had completely distanced himself from the Philadelphia Constitutional Convention and, then, subsequently (i.e., after the process of ratification had been completed) had been called upon by the country to come out of retirement in order to offer a selfless form of public service, then, perhaps, a case could be made that he was only going back on his word – which was a matter of honor -- in order to serve a higher purpose … namely, the welfare of the country. However, by allowing himself to become entangled in the machinations of the Philadelphia Convention and the subsequent ratification process, he was acting in opposition to the very principles

of republicanism that had been enshrined in Article IV, Section 4 of the Constitution because he was advancing his own interests, as were the other members of the Philadelphia Convention.

In addition to the foregoing considerations concerning Washington, reflect on the following: During the Revolutionary War, Washington thought so highly of Thomas Paine's work: *Common Sense*, that Washington arranged for the purchase of many copies of Paine's book to be distributed among the soldiers he commanded, and, as well, he encouraged his troops to read that book. Yet, after the French imprisoned Paine in 1793 during the reign of terror that took hold at a certain point within revolutionary France, Washington refused to lift a finger to seek the release of Paine.

Deeply disillusioned by Washington's failure to act, Paine leveled a barrage of criticism against Washington … someone whom, previously, Paine considered to have been a friend. In a letter that reached the President as the latter was preparing to leave office Paine stated that: "Monopolies of every kind marked your administration almost in the moment of its commencement. The lands obtained by the revolution were lavished upon partisans; the interests of the disbanded soldier was sold to the speculator; injustice was acted under the pretence of faith; and the chief of the army became the patron of the fraud." Paine went on to assert: "The world will be puzzled to decide whether you are an apostate or an imposter; whether you have abandoned good principles, or whether you ever had any."

Paine's criticisms of Washington maintain that the latter individual had failed to conduct himself with the sort of integrity that is consistent with republican moral principles and values. According to Paine, the President had not been impartial, unbiased, objective, or fair during his tenure in the Executive Branch of government but was, instead, partisan and, as a result, did not serve the interests of all of the people of the United States.

Paine did not refer to Article IV, Section 4 of the Constitution in his letter. Yet, in effect, Paine was charging the President with having failed to act in accordance with the duties of care that are encapsulated in that aspect of the Constitution.

One can spin the motives of the participants in the Philadelphia Constitutional Convention in any number of ways, and, perhaps, when

filtered through the perspective of some of the foregoing spin scenarios, the motives of at least some of the Convention participants might be considered to have been honorable and sincere. Nonetheless, at least for me, there seem to be a number of issues that cast the results of the Philadelphia Convention in a rather dubious, shadowy light.

More specifically, the Annapolis Convention that preceded the 1787 Philadelphia Convention was a failure precisely because most of the people who were supposed to attend the 1786 convention in Annapolis did not show up (or showed up too late), and, therefore, nothing of an official nature could be decided. The few individuals who did manage to attend the meeting in Annapolis passed on a report to the Continental Congress suggesting that another attempt to resolve outstanding problems concerning the existing framework of governance should take place in Philadelphia the following year.

Subsequently, the Continental Congress tasked the Philadelphia Convention with working out some amendments to the Articles of Confederation. Therefore, the purpose of the Convention was about modifying the Articles of Confederation rather than replacing them.

Furthermore, the results of the Philadelphia Convention were supposed to be presented to the Continental Congress. In turn, Congress would debate the issues arising out of the Philadelphia Convention before bringing various matters to a vote.

Although the members of the Continental Congress did begin to debate various portions of the Philadelphia Constitution, the delegates at the Philadelphia Convention had written a letter that accompanied the Constitution which urged that citizens – and not the Continental Congress -- should be allowed to vote directly on whether, or not, the Philadelphia Constitution would be adopted.

The discussion that had been taking place in Congress was suspended. Ratification conventions were organized in each of the states.

For the most part, the procedural rules governing those conventions were written by individuals who were inclined toward the federalist point of view and, as a result, those rules were used to manipulate what could and could not take place during the

conventions – often to the disadvantage of those who were not inclined toward a federalist perspective. In addition, with the exception of New York, those conventions were held in cities/towns where federalist sympathies ran high, and this atmosphere of dominance was often used to intimidate or undermine those who were not aligned with the federalist perspective.

At the Philadelphia Convention, George Mason had wanted to include a bill of rights in the Constitution. Other members at the Convention resisted those efforts, and this was one of the reasons why Mason would not sign off on the Constitution.

Furthermore, during different ratification conventions, a number of delegates also advocated introducing specific rights into the Philadelphia document. The forces backing federalism opposed those suggestions and insisted that the Constitution must be accepted, or rejected, as is … although the arguments that were given for why things must be done in this manner tended to be arbitrary and intended to serve the interests of the federalists rather than the generality of the citizenry.

If things were to have been done in accordance with republican principles – something that was guaranteed by Article IV, Section 4 of the Constitution, the ratification process should have required all states to vote on the Constitutional issue on the same day or set of days. By stringing the process out over several years, the ratification process permitted people in different states to try to influence what was taking place in other states or be influenced by what was transpiring in other states with respect to the Constitutional issue, and none of this can be reconciled with republican principles.

Furthermore, citizens should have been permitted to vote directly about whether, or not, to accept the Philadelphia Constitution without having to attend ratification conventions. Instead, they were required to vote for delegates who, in most cases, would be required to travel to localities where federalist influences were prevalent and, as a result, be subject to an array of dirty tricks, manipulative activities, and forms of intimidation or undue influence that were present at many of the ratification conventions.

In addition, there should have been an attempt to be as inclusive as possible with respect to who could vote for, or against, the

Constitution. Instead, many people (e.g., women, blacks, Indians, poor people) were often excluded from that process.

Article IV, Section 4 of the Philadelphia Constitution guaranteed that the federal government would provide a republican form of government to each state. Yet, many facets of the push for a new Constitution – from the Philadelphia Convention to the ratification conventions -- were riddled with problems that placed such a guarantee in a very dubious light since, again and again, the moral tenets of republicanism had been ignored or violated in the attempt by federalists to bring about the instituting of a constitution that, supposedly, guaranteed that the states would be governed in accordance with a republican form of governance.

Even if one were to suppose -- in a contrafactual manner -- that everything about the Philadelphia Convention, the Philadelphia Constitution, and the ratification process was capable of being reconciled with republican principles, one is still left with a major question. Why should anyone today feel bound to honor a political dynamic that took place more than 225 years ago?

What is the source of authority, duty, or obligation that, today, ties an American citizen to the Philadelphia Constitution? Moreover, given that principles of republicanism were often absent from the processes that led to the Philadelphia Constitution being adopted more than two centuries ago, doesn't that reality undermine whatever moral claim the Philadelphia Constitution might have on people today?

If government officials engage issues with: Impartiality, objectivity, fairness, honesty, integrity, nobility, and in a non-partisan manner, one might develop a sense of obligation toward that sort of a system and, as a result, one might feel inclined to try to co-operate with that kind of a process, and, as well, one might seek to defend that sort of an arrangement against all attempts to adversely affect it. On the other hand, if government officials are: Dishonest, biased, corrupt, unfair, and lack integrity, then seemingly, there is absolutely nothing that could serve to forge a sense of obligation in a person that would induce one to co-operate with or defend that sort of a process.

Said in another way, if a form of governance can guarantee to treat its people in accordance with republican moral values and principles, then, one would have a certain amount of justification for why

individuals hundreds of years later ought to feel bound to live in compliance with that form of governance. However, if a form of governance does not interact with its citizens in a republican way but, instead, engages in behavior that is antithetical to the moral principles and values of republicanism, then there is nothing – except, perhaps, fear and the threat of physical violence – that ties citizens to such a system.

Without the lived reality of Article IV, Section 4, the Constitution (including its Preamble and amendments) is relatively meaningless. Article IV, Section 4 is what brings the Constitution alive and serves as the source of its legitimacy, authoritativeness, and capacity to generate a sense of obligation in citizens.

Republican values and principles could serve as the means through which sovereignty – as outlined in the previous chapter – could be established and nurtured. However, in the absence of republican values and principles, then, the Philadelphia Constitution – even when amended – becomes little more than a play-thing in the hands of those who wield power and who have no intention to secure the sovereignty of anyone but themselves and their associates.

Chapter 4: Constitutional House of Cards – Part 1

If properly considered, the potential capacity of the Constitution to provide a framework through which to work out the principles of sovereignty constitutes, I believe, very fertile conceptual soil. Unfortunately, given the reality of how constitutional law unfolded over the last several hundred years, that legal framework has, in many respects, become a veritable house of cards in which arbitrary interpretations of the Constitution have reduced the foundations of law to being quite unstable and unreliable as a source of guidance for securing and preserving the principles of sovereignty that were outlined in Chapter 2 and that give direction and meaning to ideas such as: Liberty, justice, welfare, security, as well as the peace or tranquility that are mentioned in the Preamble to the Constitution.

When one looks at some of the critical clauses in the Constitution – involving issues such as: Contracts, regulatory provisions, due process, congressional powers, Executive authority, judicial oversight, legal supremacy, as well as what is necessary and proper – then, unless one filters the foregoing clauses through the multifaceted lenses of the Preamble (justice, tranquility, defense, general welfare, and liberty) as a function of the conceptual light that is inherent in the guarantee of a republican form of government established in Article IV, Section 4, one tends to begin at no defensible beginning and works toward no defensible end. Every aspect of governance – whether congressional, executive, or judicial – must seek to realize the principles outlined in the Preamble and do so in a manner that is capable of being reconciled with the requirements of a republican form of government, or the Constitution will become little more than an arbitrary – and, therefore, indefensible – exercise in hermeneutical dynamics in which partisan ideologies or interests take precedence over the processes of impartial, objective, independent, equitable, and rigorously honest analysis that are at the heart of the sort of republican values that were outlined in Chapter 3 and that are enshrined in the guarantee of Article IV, Section 4 of the Constitution.

Unless the Constitution operates in accordance with the principles inherent in a republican form of government, then, the federal government is not in a position to satisfy the further provisions of

Article IV, Section 4 that are guaranteed to the states – namely, protecting them against invasion and domestic violence. This is especially the case when through its failure to realize the guarantee of a republican form of government to each of the states (and the people thereof), the federal government, itself, becomes the means through which the states are invaded and become subject to domestic violence. When the federal government – through means of Congress, the Executive, and/or the Judiciary – abandons republican principles and, as a result, becomes ensconced in ideological systems of thought that are imposed on the states as policy initiatives, then, this gives expression to forms of invasion and domestic violence against the states and their people that Article IV, Section 4 requires the federal government to ensure does not occur.

However, just as the federal government must be vigilant with respect to the manner in which it interacts with the states and must guard against becoming a source of legislative, judicial, executive, ideological, and economic invasion of, and/or domestic violence against, the states, so too, the federal government must serve as a defense for the people of the various states to ensure that those people are not invaded by, or subject to domestic violence due to, the ideologically partisan acts of state governments. Ultimately, it is people who must be protected against invasion and/or domestic violence by either federal or state forms of governance.

At the heart of the Declaration of Independence is a criticism of the manner through which England was governing the colonies. More specifically, the individuals who signed the Declaration of Independence were unhappy with the way in which that form of governance violated existing principles of British law.

Initially, the American Revolution was not about rejecting British law per se. Rather, the former set of dynamics gave expression to a desire to be governed in a consistent, fair manner within the framework of British law.

Tyranny was understood by many colonists to refer to any departure from established law. Indeed, thirteen of the 27 counts that were listed in the Declaration of Independence referred to specific instances in which the King was arbitrarily deviating from English law

and was, therefore, considered to be treating colonists in a tyrannical manner.

Eventually, a desire arose within many colonists to try to improve on what were considered to be weaknesses, limitations, and/or sources of problems in the British way of governance … a desire that first led to the Articles of Confederation and, eventually, to the Philadelphia Constitution of 1787. Nonetheless, the presence of tyranny – or arbitrary inconsistencies in governance – was the catalyst for subsequently exploring alternative political and legal possibilities through, first, the Articles of Confederation and, then, through the Philadelphia Convention of 1787.

Ironically, over the last several hundred years, many Americans have come to feel that one of the essential problems with current interpretations of the American Constitutional arrangement is that like its British predecessor our present way of engaging political, legal, economic, and social issues also gives expression to arbitrary and inconsistent rulings. These sorts of rulings often are experienced as being tyrannical by various segments of the American people just as American colonists experienced many of the British ways of governance as being tyrannical due to the arbitrary and inconsistent nature of that form of governance.

Some of the overlap in the arbitrary and inconsistent dimensions of American and British forms of governance is due to the similarity of assumptions underlying those two forms of governance. For example, both systems of governance made certain problematic assumptions about: Women, indigenous peoples, race, ethnicity, commoners, religious affiliation, and the poor that created blind spots in each of those systems concerning issues of equality and liberty for a variety of categories of people … categories of people that were subject to arbitrary and inconsistent forms of governance that were experienced – and continue to be experienced -- as tyranny by those who were, and are, affected in such inequitable ways.

Before moving on to a critical exploration of the framing process that took place in conjunction with the so-called founding fathers during the Philadelphia summer of 1787, one should note that long before those events transpired, there already had been a great deal of thought devoted to the issue of governance in the colonies … ideas that

– at least in part -- resonated with various principles that were inherent in the Magna Carta. For example, some of the foregoing sorts of ideas about governance came into existence in New England more than 146 years prior to when the first meeting of the Constitutional Convention was gaveled into session during the summer of 1787.

In 1636, the Plymouth Colony of Massachusetts – which was a religiously oriented community – established a legal code. That code reflected the rather strict moral precepts to which the Puritan religious tradition gave expression.

Five years later, the Massachusetts Bay Colony -- a northern neighbor of the Plymouth Colony -- brought forth a form of governance that sought to be applicable not just to Puritans but to all free men (a termed steeped in a variety of cultural and historical biases concerning who was considered to be free), and, therefore, to a degree, attempted to augment the theologically constrained legal code of the Puritans in Plymouth Colony. The system of thought that was implemented by the Massachusetts Bay Colony in 1641 was known as the "Body of Liberties".

Nathaniel Ward wrote the "Body of Liberties. He had been authorized to do so by John Winthrop who was the governor of the Massachusetts Bay Colony at that time.

On the one hand, Ward was an orthodox minister of Puritanism who was critical of any behavior that was not in compliance with the requirements of that faith. On the other hand, prior to becoming a minister, he had spent a decade in the common law courts of England as a lawyer and was deeply influenced by that tradition – a tradition that had elements that can be traced back to some of the principles that are inherent in the Magna Carta.

Consequently, the Body of Liberties that was drafted by Ward gave expression to both secular and religious elements. The secular side of that document established rights for all free men irrespective of their religious affiliation and quite independently of whether those individuals were members of the community or were outsiders.

Among other things, the 'Body of Liberties" declared that all free men were to be treated equitably and without partiality. This meant that no free man could be deprived of his life, honor, good name, or

property without a proper cause that was clearly rooted in established laws, and, in addition, no free man could be arrested, held, or punished in the absence of such a cause.

The foregoing principles resonate with the Due Process Clause of the 5th Amendment, as well as with the Equal Protection Clause of the Fourteenth Amendment. The foregoing sorts of provisions in the 'Body of Liberties were intended to serve as a hedge against the possibility of a governing body operating in arbitrary ways that made up legal rules on an ad hoc basis.

Furthermore, according to the Body of Liberties, if punishment were warranted in any given case, then that form of redress could not be barbarous or cruel in nature. This idea, of course, resurfaced as part of the Bill of Rights' eighth amendment nearly a century and a half later.

The Body of Liberties also specified that no man could be sentenced twice for the same crime. This protection against double jeopardy was later echoed in the Fifth Amendment of the Bill of Rights.

Although the Body of Liberties foreshadowed certain aspects of what would become enshrined later in the amended Constitution in the form of certain kinds of civil liberties and protections, much of the earlier document was overshadowed by various elements of the Puritan faith. For example, somewhat arbitrarily, the Body of Liberties did not consider the death penalty to be cruel and barbarous punishment, and, as a result, there were a litany of offenses – including idolatry, witchcraft, adultery, and bestiality – that were punishable by death, and, therefore, were consonant with various teachings from the Old Testament.

In addition, while the Body of Liberties did seek to provide everyone – both community members and outsiders – with an impartial form of equitable, due process, nonetheless, the laws that were to be applied to everyone gave expression, for the most part, to a Puritan religious perspective. In other words, irrespective of whether, or not, someone accepted that perspective, the Body of Liberties held that everyone would be judged – equally and impartially -- in accordance with that perspective, and, consequently, no one got to challenge whether, or not, the underlying laws were themselves capable of being justified independently of the Puritan point of view.

Finally, as alluded to previously, the notion of free men for which the Body of Liberties was intended excluded – at least as far as civil liberties and protections were concerned -- a number of categories of people. These excluded categories included women, slaves, indigenous peoples, those without property, and individuals who offered a dissenting voice (or behavior) with respect to various "accepted" principles of Puritan theology.

The Bill of Rights did extend civil liberty protections to some of the foregoing categories – such as those involving religious dissent. Nevertheless, many of the foregoing groups of people were still marginalized for extended periods of time even after the Bill of Rights came into effect.

Consequently, nearly a century and a half after the Body of Liberties became an active system of law colonists were still grappling with a variety of issues concerning the process of governance. Moreover, many of the same sorts of biases that undermined the Body of Liberties document were present when nearly three score people met in Philadelphia in the summer of 1787.

In addition, just as Puritan theology constituted an arbitrary dimension of the Body of Liberties document, so too, there were a variety of arbitrary elements that were woven into the constitutional proceedings in Philadelphia. Moreover, just as no one was permitted to question the legitimacy of the Puritan doctrine that framed the Body of Liberties, no one in the colonies was provided with any real opportunity (as opposed to the surface appearance of such an opportunity in the form of, for example, ratification conventions) to question the legitimacy of the principles that came to frame the Philadelphia Constitution since from the very beginning the meetings in Philadelphia were closed to the public and even after the Constitution was released, federalists kept insisting that people either had to accept the Constitution as is or not at all, and, as a result, any attempts to modify the Constitution during various ratification conventions were rigorously resisted by those who were advocating its adoption as the supreme law of the land.

When people from various colonies/states (the exception being Rhode Island) began gathering in Philadelphia in mid-May of 1787, the nature of the task before them was somewhat amorphous. The

previous year, a convention to address some problems involving trade and commerce that were plaguing the Confederation of States had been set to take place in Annapolis, but was sparsely attended and, as a result, a quorum could not be established.

James Madison and Alexander Hamilton, along with a few other attendees, passed a resolution that recommended scheduling a further convention in Philadelphia that would start in May of the following year (1787). According to Madison and Hamilton, the stated purpose of the Philadelphia assembly would be to do whatever might be considered to be necessary to generate the sort of modifications to the Articles of Confederation that would enable the states to move forward in various directions – especially commercially.

What Madison and Hamilton had in mind by the idea of doing whatever was necessary to bring about a workable system would be revealed in time. How other people interpreted their words might be another matter.

When the Articles of Confederation were agreed to in 1781 – four years after the Declaration of Independence was signed and two years before the Revolutionary War was actually won by the colonists -- the arrangement was intended to serve as a declaration of friendly alliance among the colonies that were united in opposition to the British manner of governing the colonies. However, the Articles were written in a way that prevented the colonies from being able to establish any practical means for resolving conflicts concerning: Commerce, trade, boundary disputes, various problems concerning recognition of different currencies, navigation rights, as well as the issue of westward expansion and the formation of new states.

According to the Articles of Confederation, nine of the thirteen states had to agree to whatever provisions might be suggested by the Continental Congress in order for those pieces of legislation to be accepted. However, even if nine states were able to agree on a given provision, none of the states were under any obligation to abide by those arrangements because the President of the Confederation really had no power to enforce anything that might have had been agreed to by at least nine of the thirteen states, nor was there any judicial mechanism for resolving problems.

For a number of years prior to the 1787 Philadelphia Convention, a variety of people (e.g., Noah Webster) had raised the idea of scrapping the Articles of Confederation and replacing them with something that was more amenable to the needs – both collective and individual -- of the states. However, others (e.g., Benjamin Franklin) wanted to keep the Articles but were open to mending them in various ways, and, most of the leaders in thirteen states were oriented in this more conservative manner.

The individuals attending the Philadelphia Convention had been authorized by the Continental Congress to address the issue of changing the Articles of Confederation in some constructive, acceptable but relatively minimalist fashion, and, therefore, the Philadelphia attendees had not been authorized to change the Articles in their entirety. However, at least two attendees – namely, James Madison and Alexander Hamilton – were interested in refashioning the Articles in a wholesale manner.

Madison spent much of the year between the Annapolis and Philadelphia sessions occupying himself with a study of different types of governance that were established at certain points in history … especially in connection with Swiss cantons, the united provinces of the Netherlands, as well as Greek and Roman republics. In addition, he immersed himself in the study of various aspects of 17th and 18th century Enlightenment philosophy.

Madison intended to arrive in Philadelphia ahead of schedule. He wanted to have a draft of his ideas ready for consideration when deliberations began at the State House in Philadelphia.

Prior to the convention, Madison had confided to his fellow Virginian, George Washington, that he (i.e., Madison) felt that something radical should be advanced in Philadelphia. However, Madison also corresponded with Virginia governor, Edmund Randolph -- who, like Benjamin Franklin, was a proponent of bringing about only small modifications to the Articles of Confederation -- and Madison gave the impression in the aforementioned correspondence that he agreed with Randolph that only small changes should be made to the Articles during the Philadelphia Convention while, simultaneously, raising the possibility that perhaps the Confederation might be better

served if some new set of arrangements were to be considered at the forthcoming assembly.

One might note in passing that Madison – and several other federalist-oriented individuals – believed that inducing Washington to agree to come on board with their plan for changing the form of governance in America was an integral part of their long-term strategy. They wanted to be able to leverage Washington's highly favorable status among post-revolutionary states/colonies and use that status to help lend credibility to their ideas concerning the replacement of the Articles of Confederation with a new Constitution.

As Madison's ideas began to coalesce he again shared his thoughts with Washington. Madison wanted to strike some sort of balance between a central, federal authority along side of individual states that could, within certain parameters, retain their sovereignty.

Nonetheless, there was no doubt in Madison's mind that the federal government should possess a primacy that would permit it to uniformly regulate various aspects of trade and commerce, including the taxation of exports and imports. As such, states would be subject to the regulatory actions of a federal authority in a variety of key areas.

During the eleven days between the start of the Philadelphia Convention on the 14th of May and the 25th of May when a quorum among the attendees had been reached, Madison engaged in process of strategic gamesmanship involving various members of the Virginia delegation, especially Edmund Randolph who held considerable stature among the delegates to the Convention. As noted earlier, Randolph was opposed to the idea of wholesale changes being made to the Articles of Confederation, and, therefore, he was opposed to the idea of a new Constitution being brought forth at the Philadelphia Convention.

Madison's 14-point Virginia Plan had been drafted prior to the Philadelphia Convention and gave expression to a form of governance that would completely replace the Articles of Confederation. Nonetheless, in order to induce Randolph to believe that the Articles of Confederation were going to be retained to some considerable degree, Madison permitted Randolph to place a statement at the beginning of the former individual's 14-point plan which indicated that the Articles of Confederation would only be modified to the extent necessary to

ensure the general welfare, common defense, and securing of liberty for the members of the Confederation.

For Madison, such an addendum did nothing to change his intention to replace the Articles of Confederation with a new constitutional arrangement. For Randolph, the addendum meant that there would be a limit to how much the existing Articles could be modified but Randolph failed to understand how Madison would be able to use that addendum to his (i.e., Madison's) advantage because as far as Madison was concerned, wholesale changes to the Articles of Confederation were exactly what was necessary in order to secure the general welfare, common defense, and liberty for all.

Once the quorum had been achieved on May 25th and after Convention officials had been elected and rules of order had been worked out, then in order to further paint Randolph into a political corner, Madison induced Randolph to introduce the 15-point Virginia Plan (consisting of Madison's 14 ideas plus Randolph's addendum) to the Convention delegates. By doing so, Randolph became an unwitting agent for revolutionary, constitutional change even while he believed – at least in the beginning – that he was advancing a proposal that was dedicated to conserving most of the Articles of Confederation.

Although William Patterson later advanced what would become known as the New Jersey Plan (which called for only relatively small modifications to the Articles of Confederation – such as providing for a single house in Congress to be given slightly more power than currently was enjoyed by the Continental Congress -- but which still would allow the states to retain considerable sovereignty), the vast majority of discussion in the Philadelphia Convention was framed by the 15-point Virginia Plan that was proposed to the delegates in late May of 1787. Consequently, from almost the very beginning of the Philadelphia Convention, discussion was dominated by Madison's ideas about how, among other things, to create a form of governance that would disperse power among an executive, legislature, and judiciary in a manner that would not permit any one branch of government to assume a monarchical-like supreme authority.

In addition, at a certain point, the discussion among Convention delegates also became focused on what role the people would play in helping to organize the foregoing branches of government. There were

those individuals – such as Roger Sherman and Elbridge Gerry – who believed that legislators should be chosen by the representatives in state legislatures rather than selected directly by the people.

Gerry's perspective had been shaped to a considerable degree by events connected to Shay's Rebellion in which several thousand farmers in Western Massachusetts blockaded courthouses in protest against the foreclosures that were being issued by judges due to the failure of many farmers to pay the taxes that had been assigned by state lawmakers in order to help defray the costs of the Revolutionary War. Gerry feared that if people were given the power to elect members of Congress directly, then, political charlatans might leverage that power to kindle a spirit of insurrection akin to Shay's Rebellion, and, thereby, render government both ineffective and volatile.

On the opposing side of the foregoing issue stood George Mason. Mason had authored the Virginia Declaration of Rights and believed that the people – including those who were commoners – should be able to elect their representatives. He believed there was a tendency among those who belonged to the gentlemanly class (and frequently were the ones who comprised state legislatures) to be biased against those who occupied lower strata of society and, as a result, often deprived the latter of their rights – such as the capacity to vote -- in a purportedly democratic society.

James Madison also argued in favor of having people directly select their representatives – both in the larger House as well in the smaller Senate. However, Delaware's John Dickinson opposed the idea of allowing the people to appoint Senators and argued that the selection process should take place within state legislative assemblies in order to ensure that only individuals who owned considerable property and were of high character would be chosen to populate the Senate … qualities, apparently, that people outside of state legislatures were not considered to be capable of recognizing or appreciating.

When the delegates to the Philadelphia Convention voted on the foregoing issues, citizens (at least some of them) were given the right to elect representatives to the House, but, overwhelmingly, the delegates felt that Senators should be chosen by state legislatures … a position that did not change until the 17th Amendment was passed in 1913.

Irrespective of whether a delegate to the Philadelphia Convention believed – at least in the beginning -- in retaining the Articles of Confederation with only modest changes, or a delegate was interested in replacing the Articles of Confederation with something entirely new, it is clear that those delegates all believed that they had the right, if not duty, to frame the discussion taking place at the Philadelphia Convention according to their likes and dislikes. The vast majority of people in the colonies had not consented to being governed by either the Articles of Confederation or by a new Constitution, nor did they consent to abide by whatever arrangements might be reached at the Philadelphia Convention, but, instead, governance – whether at the state level or at level of the Continental Congress – was being conducted by a group of people who had gravitated toward hubs of power and were arranging things according to their interests rather than for purposes that would enhance the sovereignty of the people (as understood in terms of the discussion that occurred during Chapter 2) who lived outside of those towers of power.

The people – at least some of them – might have been given the power to elect representatives to the House of Representatives. Yet, what does it mean for someone to be elected as a representative of the people?

What are the principles of representation? What obligation – if any – does a representative have to the people who elected that individual?

Is it even possible to represent the diverse interests of a group of electors in an equitable manner … especially if those interests run in conflicting directions? Moreover, isn't it something of a pyrrhic victory for the people to have the right to replace someone who is not representing their interests with someone else who, once elected, might not represent their interests either?

What is the metric for evaluating the performance of a representative? Can it be anything but the standard of behavior (namely, honesty, objectivity, impartiality, disinterestedness, and so on) to which Article IV Section 4 gives expression in the guise of a guarantee to realize a republican form of government with respect to each of the states and to the citizens of those states?

Sovereignty – both individually and collectively -- is a balanced, integrated function of liberty, justice, tranquility, security, and welfare.

Any representative who, in the foregoing sense, does not seek to enhance the sovereignty of everyone being represented (whether, or not, they elected that representative) is failing to act in accordance with the requirements of Article IV, Section 4.

Representatives who align themselves with the ideologies of various political parties (Democrat, Republican, Libertarian, Green, and so on), political philosophies (socialism, communism, fascism, etc.), various religions (Christianity, Islam, Judaism, Buddhism, etc.), economic theories (capitalism, mercantilism, feudalism, etc.) are all in violation of Article IV, Section 4 because they are serving as judges in their own cause or ideology … something to which the principles of republicanism stand in opposition. To comply with the requirements of republicanism, government officials must make judgments that are impartial and disinterested as far as realizing particular ideological, philosophical, religious, or theory-based economic goals are concerned and, instead, those individuals are supposed to concentrate on trying to enhance the sovereignty of everyone in an equitable manner.

During an interchange concerning the extent of the powers that should be assigned to the federal legislative process, Edmund Randolph indicated that he was opposed to any proposal that would, in effect, grant unlimited power to a federal legislature and maintained that such power would be an infringement on the authority and jurisdiction of the states. Madison countered by arguing that the federal legislative body should be provided with whatever was necessary to be able to bring about effective governance concerning matters of happiness, security and liberty for the community as a whole.

However, since words such as: 'Happiness', 'security', 'liberty', and 'necessary' were not defined by Madison, there was considerable amorphousness about just what sort of legislative power Madison had in mind. Was he proposing something akin to the sort of unlimited power to which Randolph had expressed opposition, or was something else meant, and if so, just what was Madison advocating in that regard.

During the foregoing discussion, Madison had alluded to the possibility of enumerating the powers of the legislative body. Yet, almost simultaneously, he expressed doubts about how practical that kind of an enumeration process might be.

Eventually, toward the latter stages of the Convention (August), the subject of enumerated powers would be pursued in considerable detail. In the mean time, however, most of the delegates agreed with Madison – and, therefore, disagreed with Randolph -- that the federal legislative body needed to have whatever powers were considered to be necessary to advance the happiness, security, and liberty of the people.

Irrespective of whether one considers things from the perspective of, on the one hand, Randolph, who sought to retain state jurisdictional supremacy in many matters, and, on the other hand, Madison, who wanted to assign to the federal government whatever jurisdictional supremacy might be considered to be necessary for advancing the happiness, security, and liberty of the people, there was something missing from the discussion. More specifically, no one seemed willing to entertain the possibility that neither the states nor the federal government should be the ones deciding what might be necessary to advance the happiness, security, and liberty of the people.

Perhaps jurisdiction concerning the foregoing matters should belong to the people themselves rather than to state and/or federal representatives. Perhaps the task of state and federal governments should be about trying to establish the sort of conditions that might be most conducive to providing people with a fair opportunity to constructively pursue issues of happiness, security, and liberty free from government impositions concerning those matters. Perhaps the problem was not a matter of the either/or choice to which state and federal governments gave expression, but, instead, perhaps, there were additional possibilities that, at least in certain cases, might give jurisdictional supremacy to the people rather than to the state or federal government … a possibility that seems to be alluded to in both the Ninth and Tenth Amendment.

William Patterson of New Jersey believed that the people – especially those without property – should have no jurisdictional authority whatsoever. Although like Edmund Randolph, Patterson wanted states to be able to retain considerable sovereignty, he maintained that irrespective of whether one was talking about state or federal government, only the selection of representatives from among the elite would result in effective governance, and, therefore, he – like

many other participants at the Philadelphia Convention – would have been inclined to reject any possibility that did not assign jurisdictional authority to members of the elite (drawn largely from the class of gentlemen) who were the only individuals he considered to be competent to run state or federal forms of governance.

Madison might have been more willing than Patterson was to broaden the pool from which representatives could be drawn, and, certainly, Madison had less contempt for the generality of people than Patterson did. Nonetheless, like Patterson, Madison believed that representatives – whether in the House or the Senate – should be making determinations about what was necessary to secure the happiness, safety, and liberty of the people.

According to both Madison and Patterson, the foregoing sorts of determinations should be the prerogative of government rather than an entitlement of the people. Patterson, like Edmund Randolph, believed that states should have primary jurisdiction when it came to the locus of control with respect to the reins of government, while Madison believed that the federal government ought to have jurisdictional supremacy when it came to deciding what was necessary to secure the happiness, safety, and liberty of the people, but they both believed that there needed to be some sort of so-called representative, institutional authority presiding over things.

Consequently, almost the entire discussion at the Philadelphia Convention was framed in terms of institutional rights (whether state or federal) concerning governance. The only value that the people had was as objects toward which governance was directed and over whom government – whether state or federal – had control.

The proposed Constitution might have granted people (actually, only some of them) the right to control – at least in conjunction with selecting members for the House – who would, and would not, become a representative. However, once elected, the representatives, along with the state-appointed Senators, were the ones who got to control the people in accordance with the ideas that the governing class had as far as what might be considered to be necessary for advancing the happiness, security, and liberty of the people … even if those members of the governing class couldn't justify what they considered to be necessary for those purposes or weren't able to satisfactorily

delineate, in a non-arbitrary manner (that is, through an independently verifiable process), what those representatives meant by notions such as: Happiness, security, or liberty.

In short, the vast majority of those attending the Philadelphia Convention were not really committed to exploring the issue of sovereignty (as outlined during Chapter 2) in ways that served all people but, instead, those participants were largely motivated to find various means of serving their own limited, individual interests as well as serving the interests of those who had sent them. And, one of the clearest indications in support or the foregoing contention comes in the form of what is referred to as the Great Compromise, the Connecticut Compromise, or Sherman's Compromise (Roger Sherman who introduced the idea was from Connecticut).

On the surface, the compromise was about establishing a bicameral Congress in which the membership of the lower body, or House, would be based on proportional representation, while the upper house, or Senate would be made up of two representatives from each state quite independently of the population of those states. However, the details of the foregoing compromise were premised on a method for determining proportional representation that permitted various states to count slaves as three-fifths of a person. Thus, even though slaves had no rights, civil liberties, and were not even considered to be human beings by many of the delegates, the mere existence of those slaves could be used to increase the number of representatives that slave states were entitled to send to the lower chamber of Congress.

Four small states – Maryland, Delaware, Connecticut and New Jersey – joined forces with a large slave state – North Carolina – to form a relative majority of five votes (see below to learn how five constitutes a majority among the twelve states that attended the Convention) in favor of the compromise in which small-population states would be entitled to have the same number of senators as large-population states, and, in addition, slave states like North Carolina would be entitled to count slaves as equivalent to three-fifths of a person for purposes of determining proportional representation in the House. The representatives from Maryland, Delaware, Connecticut, and New Jersey didn't mind permitting other states to use slaves (who

possessed no voting rights or civil liberties) to increase the population-based proportional representation of those other states as long as the four small states would be able to have as many senators as large-population states, and the representatives from North Carolina didn't mind permitting small-population states from being disproportionately represented in the Senate as long as North Carolina got to leverage its slave population in order to be able to enhance its "proportional" representation in the House.

The foregoing compromise was about acquiring power through whatever means were considered necessary. The interests of the four small-population states as well as the interests of the large-population slave state were served because each of those states was able to acquire additional power to which they were not necessarily entitled on the basis of the size of their respective populations of individuals who could vote, and, furthermore, none of those states was interested in securing the sovereignty of slaves or ensuring that participation in the Senate reflected actual populations and, as a result, would prevent small-population states from wielding more power in the Senate than, perhaps, they deserved to do.

Previously, it was noted that although there were twelve states represented at the Philadelphia Convention, a group of five states was sufficient to pass the Great Compromise. Four states – namely, South Carolina, Pennsylvania, Georgia, and Virginia – voted against the Great Compromise because they were unwilling to grant small-population states an additional senator in exchange for being able to count slaves as three-fifths of a person for purposes of determining proportional representation … apparently, they felt that the foregoing arrangement was too costly with respect to the power that would have to be relinquished in the Senate if they were to agree to such a trade-off.

Four other states were split over the matter and did not figure into the final 5-4 tally for the Great Compromise vote. The New York and New Hampshire delegations did not have a quorum and could not vote, while Rhode Island had not sent any delegates to the Convention and, therefore, was not present to vote one way or the other.

The rules governing the Philadelphia Convention were different from those that were stipulated in the Articles of Confederation. In the latter set of rules, nine of the thirteen states needed to vote in favor of

any given issue in order for that resolution or piece of legislation to be considered acceptable -- at least in a nominal sense -- whereas at the Philadelphia Convention, votes concerning this or that aspect of the Constitution could be carried by a simple majority of those voting on that aspect of things.

Consequently, the rules adopted at the beginning of the Philadelphia Convention were relatively change-friendly. Establishing a simple majority among states was a much easier task than having to get agreement among nine of thirteen states.

The foregoing is especially the case given that three states did not participate in the votes taking place at the Convention. Rhode Island did not send any delegates, and the New York and New Hampshire delegations lacked a quorum.

If the rules present in the Articles of Confederation held sway at the Philadelphia Convention, then every vote would have required that nine out of ten states would have had to agree on how to proceed on any given issue, and this would be a very steep threshold to achieve if change – whether minimal or significant – were to occur.

Consequently, from the time that the rules governing the Philadelphia Convention were agreed upon toward the middle-to-latter part of May 1787, the Convention was already operating in a manner that constituted a significant departure from the way that the Articles of Confederation regulated matters. When one considers the degrees of freedom that the foregoing sorts of Convention rules put into motion and couples that with Madison's 14-point plan for overturning the Articles of Confederation that had been introduced by Edmund Randolph (at Madison's urging) once a quorum had been reached and Convention rules had been decided upon, the operating structure of the Philadelphia Convention had been framed in favor of those who had a federalist agenda and, therefore, wanted to bring about a coup d'état with respect to the Articles of Confederation.

One might view the foregoing considerations and conclude that proceeding in such a manner was just a case of Convention maneuvering on the part of some rather astute politicians. On the other hand, there seems to be an element of manipulative and underhanded behavior – and, therefore, decidedly not republican in nature – concerning what went on because most of the people who

were delegates to the Convention were under the impression – at least in the beginning -- that their task was to make some set of small changes to the Articles of Confederation, and, consequently, they were relatively unprepared for what was about to transpire during the Convention, nor were they likely to have questioned why the Convention rules might have been fashioned in one way rather than another.

Patrick Henry had turned down an invitation to the Philadelphia Convention because he felt that the proposed assemblage had the smell of monarchy about it. Henry's intuition seemed to be quite prescient because federalism was set to become a new form of monarchy (rule through centralized authority), and the Philadelphia Convention was the first step in that process.

Following the Great Compromise vote, Edmund Randolph voiced his dissatisfaction with what was taking place at the Convention. Among other things, he was unhappy with the way in which slim majorities were deciding matters.

William Patterson echoed Randolph's concerns. In addition, Patterson felt that the veil of secrecy surrounding the Convention should be dropped and that the Convention should be adjourned so that delegates could return to their respective states and confer with other individuals about what was transpiring at the Convention.

Although Edmund Randolph had indicated that he felt the Convention should be adjourned, he was interested in only a temporary form of adjournment in order to be able to provide an opportunity for him – and others -- to reflect on various concerns that had arisen in conjunction with the Great Compromise issue, and, therefore, he was not interested in the indefinite sort of adjournment that was being proposed by Patterson. Other delegates (e.g., John Rutledge of South Carolina) also spoke up at that point indicating that they wanted the Convention to move forward.

Further discussion concerning the Great Compromise took place outside of session. Eventually, most of the delegates were prepared to accept the narrow 5-4 decision in favor of the Great Compromise and were ready to continue on with other issues.

A number of those issues directly addressed the topic of slavery. For instance, on August 28th, Charles Cotesworth Pinckney and Pierce Butler of South Carolina proposed that fugitive slaves and runaway indentured servants should be treated as criminals.

Roger Sherman of Connecticut objected to the South Carolina proposal and felt the idea was problematic on a number of levels. The South Carolina delegation proceeded to re-work their proposal between sessions and returned to the Convention and suggested that when fugitive slaves were captured they should be returned to their legal owners.

There was no recorded debate concerning the foregoing proposal. The delegates voted to accept the idea.

About a week prior to the foregoing vote, there had been a fairly heated discussion concerning the nature of slavery. Despite being an owner of domestic or household slaves, Luther Martin of Maryland wanted to ban any further importation of slaves into the country and argued that slavery was inconsistent with the principles for which the Revolution had been fought and, furthermore, he believed that officially endorsing the idea of slavery in the text of the Constitution would cast a very dishonorable shadow upon the country.

John Rutledge of South Carolina vigorously countered Martin's comments by maintaining that slavery was not a matter of either morality or religion. Instead, he considered slavery to be strictly a variation on the same sorts of economic interests that governed the dynamics of all nations.

In addition, Rutledge reminded Martin that the Constitution had not, yet, been adopted. The South Carolina delegate alluded to the possibility that slave states might be prepared to back away from agreeing to the proposed Constitution if they were pushed too far on the slavery issue.

Roger Sherman of Connecticut sought to fashion what he considered to be a pragmatic approach to the slavery issue. More specifically, although he, personally, was opposed to the idea of slavery, he felt that the Convention delegates should not let that matter get in the way of reaching an agreement that would enable a new Constitution to be established.

George Mason of Virginia responded with indignation to Sherman's pragmatic approach to the slavery issue. Even though Mason was a slave owner, he expressed outrage toward the trafficking of slaves and the way in which people's financial and economic greed tended to corrupt their sense of morality concerning the issue of slavery … apparently indicating that some forms of slavery might be better than others.

Oliver Ellsworth, Sherman's fellow delegate from Connecticut, believed that objecting to the slave trade was rather unfair to those whose economies depended on the productivity of slaves. In effect, he was agreeing with Sherman and indicating that slavery needed to be put in an appropriate context and should not get in the way of reaching agreement on the Constitution.

Gouverneur Morris of Pennsylvania suggested that the matter be placed in the hands of a committee that might work out some sort of compromise between slave and non-slave states. The foregoing sort of committee was established, and after deliberating on the matter for a time, the committee proposed that the importation of slaves should be terminated but not until a grace period of thirteen years had passed.

Charles Cotesworth Pinckney of South Carolina mad e a counter proposal and suggested that the 13-year period be extended an additional 8 years to 1808. Despite the opposition of James Madison to Pinckney's idea, the remainder of the delegates voted in favor of the extension.

As Luther Martin had indicated at the start of the debate concerning the importing of slaves, Madison argued against Pinckney's idea by pointing out that agreeing to permit the practice of slavery to continue would constitute a stain on the American character. Moreover, he believed that allowing slaves to be imported into the country for an additional twenty years would sow the seeds of discord and mischief throughout the country … seeds that subsequently could sprout into all manner of difficulties for the country.

The overwhelming number of Convention delegates who voted in favor of extending the importation of slaves until 1808 clearly indicates that at the heart of the Constitutional forging process was a practical commitment toward establishing ways to effect power sharing among different segments of society. Despite the desire of

people such as Madison, Hamilton, and others to divest themselves of the limitations inherent in the Articles of Confederation, nonetheless, for the most part, the Philadelphia Convention was not a revolutionary means for exploring ways to assist human beings to be able to realize sovereignty (as outlined in Chapter 2) but was, instead, an exercise in establishing a new method for institutional governance that would permit state and federal officials to share the reins of power for purposes of shaping, among other things, the face of commerce within America, and this theme was clearly evident in the debates -- and especially the votes -- concerning slavery that took place during the Philadelphia Convention.

Despite the guarantee of Article IV, Section 4, there was little, if anything, that could be identified as being republican in character that was reflected in the values – or lack thereof -- that heavily influenced Convention votes on issues such as slavery. How does willingness to enslave people for purposes of personal gain and acquisition of political power reflect republican qualities of: Honor, equitability, justice, impartiality, objectivity, or not serving as a judge in one's own cause?

The absence of republicanism was also present with respect to the manner in which the Philadelphia delegates were working on the assumption that the vast majority of people were not capable of seeking their own happiness, safety, or liberty. Most of the delegates to the Philadelphia convention considered the idea of representation to be largely a matter of enabling only certain categories of people to vote or be elected, and, moreover, once elected, representatives were presumed to be the individuals who were best suited to determine what constituted happiness, security, and liberty for the generality of people and how to go about realizing those goals. Such self-serving arrogance and presumption is hardly consistent with the principles of republicanism (as outlined in Chapter 3) that supposedly were at the heart of the Philadelphia Constitution.

Some individuals might wish to argue that the sort of republican government that is being guaranteed in Article IV, Section 4 of the Constitution involves little more than the following ideas: (a) There should be three branches of government that are "equal partners" in some sense of that term; (b) one of those branches of government –

namely, the legislative – should be bicameral in nature, and (c), the people – or, at least, some of them – should be able to elect both representatives as well as the President (although the latter issue is determined by the calculus of the electoral college rather than being a function of just the popular vote and as such, once again, that arrangement seeks to place constraints upon the political power of the vast majority of people).

However, if one removes the purely political and legal structural features of a republic from an underlying context consisting of the sort of republican moral philosophy that was outlined in Chapter 3 and that would serve as the metric through which to objectively and impartially measure the extent to which the structural features of governance are effectively enhancing the liberty, security, justice, and happiness of all people within society (i.e., all of which are components of genuine sovereignty), then, the foregoing sort of sterile, empty form of republicanism becomes little more than a process for generating arbitrary decisions by means of a framework of governance that organizes and distributes institutional power. Under those circumstances, what is being guaranteed is not worth being guaranteed … except, perhaps, for those who are successful in acquiring institutional power and, thereby, become empowered to generate whatever arbitrary decisions they like to advance self-serving purposes.

In fact, the previously discussed debates and votes surrounding the issue of slavery give expression to a very instructive set of examples that provide concrete illustrations concerning what to expect when the purely structural features of a republic are used in a manner that are divorced from an accompanying republican moral philosophy (or something of a similar nature). More specifically, when the delegates to the Philadelphia Convention strayed from republican moral principles, they became judges in their own causes and, as a result, they were no longer guided by considerations of: Impartiality, objectivity, fairness, honor, and decency in conjunction with determinations concerning: Justice, domestic tranquility, common defense, general welfare, and principles of liberty.

The foregoing comments concerning republican moral principles might have considerable relevance to the issue of a national judiciary,

but understanding the nature of that relevance will require a certain amount of exposition. To begin with, although Madison had included the idea of a national judiciary in his 14-point Virginia Plan, the precise function and modus operandi of that body remained somewhat elusive.

Apparently, Madison believed there were going to be delegates at the Philadelphia Convention who had judicial experience. Presumably, during discussions, those individuals might be able to provide some insight into how a national judiciary might operate, and, if so, then some of those insights might be incorporated into the text of the Constitution to fill in some of the details concerning Madison's general idea for a national judiciary.

Unfortunately, the foregoing kind of discussion never took place during the Philadelphia Convention. In fact, there were only a few limited discussions concerning: The idea of a national judiciary, what such a body would entail, or how people would be appointed to that branch of government.

Somewhat ironically – at least from the perspective of what has transpired over the last several hundred years in conjunction with the activities of the Supreme Court -- even though the idea of a national judiciary was included in Madison's 14-point plan, nevertheless, during the Convention he voiced doubts about whether that branch of government should handle all cases that arose under the Constitution and indicated, instead, that, perhaps, such a body should be limited to matters that were purely judiciary in nature. Some individuals might suppose that by contrasting cases arising under the Constitution with the idea of cases that were purely judicial in nature, Madison was making a distinction without a difference, but whatever distinction he might have been alluding to, he did not provide further details on the matter, so, one is left wondering what it would mean to engage cases arising under the Constitution that were not of a judicial nature.

At another juncture, Madison also spoke about the possibility that the Supreme Court might serve in the capacity of an advisory body that would issue commentary concerning the constitutionality of legislation before the latter became law. Once again, Madison provided no details about the nature of the basis on which, or process through

which, any given piece of legislation would be designated as being, or nor being, constitutional in nature.

In any event, most of the other delegates rejected his proposal about having the national judiciary review legislation prior to its becoming law. Had more delegates agreed with Madison concerning the foregoing idea, they might have realized that judging the constitutionality of legislation before it became law could have helped to avoid a lot of difficulties that arise when the constitutionality of a law (however this might be determined) is only considered after it has had an unfair, unjust, or problematic impact upon society for some period of time.

John Mercer of Maryland, a late-comer to the Convention (he first began to participate on August 6th), not only stated his general opposition to the draft of the Constitution that recently had been released by the Committee on Detail, but, as well, a little over a week later, during a debate about the nature of the judiciary, he voiced strong opposition to the idea of giving judges the power to be able to declare laws unconstitutional since he believed that laws should be made with considerable circumspection and, then, once made, they should be left undisturbed.

At least one other delegate – namely, John Dickinson of Delaware – found Mercer's arguments persuasive that opposed the idea of permitting judges to have the authority to declare laws null and void. Yet, at the same time, Dickinson was puzzled about how handle the issue of constitutionality if judges were not given some kind of final authority concerning what constituted being constitutional.

Shortly after the foregoing discussion, Mercer withdrew from the Convention. Moreover, subsequently, during Maryland's ratification process, he campaigned against the Constitution.

On the opposite side of the argument from Mercer was Elbridge Gerry of Massachusetts. Although, eventually, Gerry voted not to endorse the Philadelphia Constitution, nonetheless, as a delegate to the Convention, he was a vociferous proponent of the idea that Supreme Court judges should not only be independent of other branches of government but, as well, that the judges who made up the national judiciary should be able to determine the constitutionality of various laws.

Gerry was responding to an idea of Madison's that called for some sort of an amalgamation between the Supreme Court and the President that was referred to as the "Council of Revision" and which would pass judgment on the constitutionality of all state laws. However, Gerry -- who feared what he considered to be the excesses of democracy to which he believed the generality of people were susceptible -- wanted a central, independent, judicial authority to be able to have the final say about what was, and what was not, constitutionally permissible.

Yet, like Madison, Gerry did not indicate how the judiciary would determine the nature of constitutionality. Neither Madison's "Council of Revision" idea, nor Gerry's notion of an independent judiciary, were accompanied by the sort of details that would clarify how, or on what basis, constitutional determinations would be reached.

In contradistinction to Madison and Mercer, but in line with the perspective of Gerry, William Johnson of Connecticut had proposed that the Supreme Court be given jurisdiction over all cases that might arise in conjunction with the Constitution as well as jurisdiction over whatever laws might be passed by Congress. Johnson's proposal passed without dissent but also did not entail any additional elaboration about how the Supreme Court would go about dealing with the foregoing sorts of issues.

On the basis of the discussions – limited though they might have been -- and on the basis of votes that did take place in conjunction with the idea of a national judiciary, many delegates indicated they wanted that body to have the sort of power that would enable it to have preeminent jurisdiction over cases that involved, for example, various conflicts between the states and the federal government as well as conflicts arising between states. Moreover, the delegates wanted the judiciary to be able to sort out – through some sort of unspecified judicial review process -- whether, or not, the federal government and/or the states were operating in accordance with the provisions of the Constitution.

Although William Patterson of New Jersey was a staunch advocate for giving preeminent power and jurisdiction to states rather than to the federal government, nonetheless, he proposed that the laws of Congress should be considered to have supremacy over state laws.

Apparently, Patterson believed that the states would be able to exercise control over what he envisioned would be a relatively weak executive office due to the presence in Congress of state representatives and state-appointed Senators, and, therefore, when he gave supremacy to the laws of Congress, he was, in effect, stating what he considered to be something of a tautology in which the preeminence of states would be retained at the federal level as well.

When the Committee on Detail came out with its draft of the Constitution on August 6th, Patterson's language concerning the issue of federal supremacy relative to state governments was retained. However, what Patterson had not anticipated was that the state influence at the federal level would be diluted considerably through the activity of a national judiciary to which, subsequently, Convention delegates would give preeminent jurisdiction concerning, among other things, all matters that arose in conjunction with the Constitution, as well as in circumstances that involved conflicts between states.

Therefore, in principle, the national judiciary – rather than Congress or the Executive Branch -- became the ultimate arbiters of what constituted the supreme law of the land. The only problem was that no one really knew – in concrete terms -- what any of that actually meant.

Toward the end of the comments concerning the Great Compromise that were given a few pages ago, I intimated that the Constitution might offer some possible guidance with respect to how to proceed with respect to the issue of constitutionality. That possibility is rooted in the republican moral philosophy that lies at the heart of Article IV, Section 4 of the Constitution in which a republican form of government is guaranteed to each state.

Although various delegates had raised the possibility of judges being able to interpret the meaning of the Constitution, there was no consensus about what that kind of an interpretive process might entail. However, what if the task of Supreme Court justices was not a matter of trying to interpret the meaning of the Constitution but was, rather, a matter of determining whether legislation or executive action was done in accordance with republican values of: Impartiality, objectivity, honesty, fairness, tolerance, openness, and whether, or not,

legislators and officers of the Executive Branch were operating in accordance with republican moral values.

There is no unified theory concerning the possible meaning of the Constitution that enjoys universal support. Almost every – if not every – theory seeking to determine the meaning of the Constitution is steeped in arbitrary ways of hermeneutically parsing the text of the Constitution that cannot be demonstrated – at least to the satisfaction of a significant majority of the people -- to be correct beyond a reasonable doubt independently of the assumptions and biases that frame those theories.

On the other hand, determining whether, or not, legislation was constructed and passed, or executive actions were done, or states were operating in impartial, fair, objective, and open ways that were not a function of legislators, executive officials, and state officials serving as judges in their own causes seems a much more manageable and straightforward task for Supreme Court jurists to focus upon. How states, a federal legislator, or member of the Executive Branch go about determining the nature of: Justice, domestic tranquility, the common defense, general welfare, and liberty as well as whether, or not, the actions that put their determinations into practice can be considered to have met the standard of serving to guarantee a republican form of government is a process that can be rigorously analyzed in concrete terms that does not require forays into the possible meaning of the Constitution.

From the foregoing perspective, such considerations as: Due process, the idea of being proper and necessary, the supremacy clause, regulation of commerce, and so on can be explored in terms of whether or not the actions of government – whether state or federal – comply with republican principles of moral philosophy. As such, the primary task of the Supreme Court becomes one of ensuring that an equitable framework exists that constrains and directs the process of governance through which: Justice, domestic tranquility, the common defense, general welfare, and liberty are established in as equally, fairly, and fully a manner as possible for everyone and not just for certain groups of individuals or segments of society.

Furthermore, there is nothing that requires the foregoing process of judicial review to occur only after the fact of laws being enacted or

executive actions being made. There will be occasions when Madison's idea of having the Supreme Court review legislation before the latter becomes law or before Executive actions are put into active practice might provide an opportunity to resolve policy issues before they become problematic in society rather than after the fact when considerable damage might already have been visited upon the people.

In addition, since the Constitution is considered to be the supreme law of the land, and since Article IV, Section 4 gives expression to the only guarantee that is offered in the Constitution, there is a transitive quality inherent in the supremacy clause that renders it a function of Article IV, Section 4 because every aspect of the Constitution – from Preamble through Amendments – must operate in accordance with the guarantee of a republican form of government that is to be afforded to every state and the citizens thereof. Consequently, the Supreme Court itself should be subject to the requirements of Article IV, Section 4 and, therefore, there is nothing to prevent the appointing – on a regular or irregular basis -- a special counsel and/or committee to critically investigate the work of the Supreme Court in order to ensure that those jurists are acting in compliance with the requirements of the principles of a republican moral philosophy that are mandated through Article IV, Section 4 of the Constitution.

Finally, before moving on in the next chapter to a more detailed analysis of the activities of the Supreme Court when considered in the light of republican moral philosophy, a few comments should be directed to reiterating certain aspects of the failure of the ratification process to adhere to principles of republicanism … points that were noted earlier but need to be mentioned again. These comments raise serious questions concerning the legitimacy of the ratification vote precisely because the principles of republicanism that supposedly were going to be Constitutionally guaranteed to the states were so frequently breeched during the ratification process.

For example, not only had the Philadelphia Convention exceeded its mandate with respect to being authorized to offer only minor revisions to the Articles of Confederation, but the delegates to the Convention drafted a letter to accompany the completed Constitution that ran contrary to what had been agreed upon prior to the Convention – namely, that whatever changes to the Articles of

Confederation might be brought forth by the Philadelphia Convention, those changes would be debated and decided upon by the Continental Congress. Instead, the aforementioned letter urged that the people should be the ones who accepted or rejected the proposed Constitution.

Unfortunately, if the recommendation of the Philadelphia Convention for gaining the consent of the people with respect to the proposed Constitution were accepted, there were many individuals (women, slaves, indentured servants, indigenous peoples, and the poor) who would be prevented from having any say in their political fate. Consequently, the proposal being advanced by the delegates to the Philadelphia Convention was replete with the sorts of biases and partisan ideas concerning who should be permitted to vote to ratify or reject the Constitution, and, as a result, gave expression to violations of republican moral principles because of the relative absence of any sense of objectivity, impartiality, or fairness that governed that process.

Some individuals might wish to object to the foregoing comments by claiming that the delegates to the Philadelphia Convention were merely operating in accordance with the cultural and social mores of their times. However, there is nothing in republican moral philosophy which indicates that qualities such as impartiality, objectivity, and fairness are to be measured from the perspective of the biases and sense of fairness that are prevalent at a given point in time.

If one wants to be considered to be acting in a fair manner, then, everyone has to be treated fairly. If one wishes to be considered to be acting in an impartial manner, then, all biases, partisanship, interests, antipathies, and preferences must be removed from the deliberative process … this is what is meant by the idea of objectivity.

If the foregoing is considered to set too high a moral bar for the process of governance to navigate, then, the delegates to the Philadelphia Convention shouldn't have guaranteed a republican form of government to each of the sates. However, such a guarantee was made, and, therefore, the activities of the delegates as well as the process of ratification should be evaluated in the light of that guarantee.

Once state officials decided to accept the proposal by the delegates to the Philadelphia Convention and move forward with the idea of a ratification process, additional violations of the principles of republican moral philosophy occurred. For instance, in order to ensure that what was transpiring in one state did not influence what was taking place in other states vis-à-vis the voting process, the day or set of days for accepting or rejecting the Philadelphia Constitution should have been uniform throughout the thirteen states, but this was not the case, and, as a result, the ratification votes in one state were often used to try to sway the votes in other states (for example, riders were sent to the New York ratification convention from New Hampshire and Virginia with news of the votes in the latter two states).

Moreover, different towns, villages, and cities, should have been permitted to hold their ratification votes locally rather than arbitrarily be required to vote on delegates who would have to travel to cities where Federalist forces were usually strong and that would, then, be able to intimidate those traveling delegates or be in a position to interfere with or influence the votes of those delegates. In addition, the rules that were adopted in each state for governing ratification conventions were often fashioned ahead of time by individuals who were committed to the Federalist perspective and, therefore, those rules were anything but impartial and unbiased in nature.

Federalist forces in New Hampshire, Massachusetts, Pennsylvania, and Connecticut played an array of dirty tricks on delegates to the ratification conventions in those states who were either opposed to federalism or who had not, yet, made up their mind about the matter (A more detailed discussion of the sort of dirty tricks being alluded to here can be found in Chapter 2 of *The Unfinished Revolution: The Battle For America's Soul*). Such manipulative behavior is entirely inconsistent with republican moral philosophy, and, yet, somehow one is apparently supposed to presume that a process that is not conducted in accordance with principles of republican moral philosophy will be able to establish a form of governance that suddenly will start operating in accordance with those principles.

One might also note that in three of the foregoing states (namely, New Hampshire, Massachusetts, and Pennsylvania) the votes were relatively close. Consequently, it is possible that the aforementioned

dirty tricks might have had a significant impact on the outcome of the ratification votes.

The vote tallies in three of the first four states to hold ratification conventions (i.e., namely, Delaware, New Jersey, and Georgia – and did so within a matter of three months, or so, following the adjournment of the Philadelphia Convention) indicated that none of the delegates in those three states voted against ratifying the Constitution. Given that in ten other states there were sizable numbers of delegates who opposed ratifying the Constitution, one can't help but wonder if the process through which delegates were selected to participate in the aforementioned three state ratification conventions, or the rules governing those conventions, or the manner in which those conventions were conducted was done in an objective, impartial, fair, and non-partisan manner, and if they weren't, then this constitutes a violation of the principles of republican moral values and, as such, threatens the likelihood that once ratified, Congressional delegates from those states would be capable of complying with the guarantee that is present in Article IV, Section 4 of the Constitution.

Initially, the delegates to the North Carolina ratification convention voted to neither accept nor reject the Philadelphia Constitution. Instead, they put forward a Declaration of Rights as well as a series of suggested amendments for modifying the Constitution.

During the Philadelphia Convention, when states were voting on the Great Compromise, the votes of states that were split on the issue ended up as non-votes and were not included in the final tally. If, in the interests of fairness and objectivity, all states were required to hold their ratification votes on the same day or set of days, then, the non vote of North Carolina should have been discounted when tallying the ratification vote.

Similarly, when the ratification vote seemed aligned to go against the interests of various delegates to the New Hampshire ratification convention that were in favor of endorsing the Philadelphia Constitution, those individuals were able to maneuver to adjourn that convention. Like North Carolina, if all the states had been required to hold their ratification vote on the same day, then, the New Hampshire adjournment should have counted as a non-vote, and, irrespective of whether or not the ratification vote was held simultaneously on the

same day or set of days, utilizing rules of order to serve partisan interests is not consistent with principles of republican moral philosophy, and, therefore, once again raises doubts about the ability of future Congressional delegates from New Hampshire to act in accordance with the guarantee that is given in Article IV, Section 4 of the Constitution.

One also might note that many of the individuals who served as delegates to the Philadelphia Convention also served as delegates to their state ratification conventions. This should not have been permitted to take place because since the delegates to the Philadelphia Convention were already on record as having voted either for, or against, adopting the Constitution, they would have been serving as judges in their own cause at the state ratification convention, and, therefore, would have been violating one of the central tenets of republican moral philosophy that was being guaranteed to the states in the Philadelphia Constitution.

Finally, during quite a few state ratification conventions, delegates either wanted to explore, or actually adopted, a variety of possible amendments that they wanted to see incorporated into the Philadelphia Constitution. However, federalist forces in those states strenuously resisted such efforts because they felt those sorts of discussions and/or amendments would complicate and slow down the process of making the Philadelphia Constitution the law of the land.

Thus, although on the surface of things the consent of the people was being sought as a means of lending legitimacy to the Philadelphia Constitution, in a variety of respects many federalist-oriented forces were resistant to, if not opposed to, obtaining the consent of the people except in ways that served the interests of the Federalists. If the ratification process had been truly impartial, unbiased, objective, and fair, not only should the delegates to the ratification conventions have been encouraged to explore the issue of amendments, but, as well, there should have been a process for incorporating some, if not many, of those amendments into the Constitution prior to the holding of a final ratification vote.

To be sure, pursuing things in the foregoing manner likely would have extended, to some unknown degree, the final ratification of the Constitution. Nonetheless, after all was said and done, the final

product from such a process might have been far superior to the document that came out of Philadelphia in the summer of 1787, and, when one considers that several additional years would be required to ratify the Bill of Rights, a Constitutional adoption process that made room for deliberations concerning amendments to the Philadelphia Constitution would have been far more consistent with the principles of republican moral philosophy than was the arbitrary insistence of Federalist forces that delegates to the ratification convention must accept or reject the Philadelphia Constitution as is.

Chapter 5: Constitutional House of Cards – Part 2

The Supreme Court did not have an auspicious beginning. According to the Judiciary Act of 1789, Congress specified that the Court should consist of six members, but when the Court attempted to go into session for the first time on February 1, 1790, only three members of the Court showed up (the Chief Justice and two associate justices), and, since this was one person short of a quorum, the first meeting of the Court had to be adjourned.

Things didn't improve much on the following day. Although enough justices (barely) did manage to attend the session and, thereby form a quorum, there were no cases to be heard, and, as a result, the jurists spent the rest of the session establishing a variety of rules for regulating Court procedures.

Not only were there no cases to be heard on the second day of the Supreme Court's existence, but, as well, the foregoing trend continued on for the next several years. The first case to be heard by the justices that required a decision arose during August of 1792 in *Georgia v. Brailsford*, a case that dated back to 1774 and concerned an alleged debt that was owed by certain Americans in conjunction with property owned by British citizens that had been confiscated during the Revolutionary War

Quite a few individuals refused Washington's overtures to be appointed to the Supreme Court. Being invited to sit on the Supreme Court bench was not considered to be very appealing because: The pay was quite low, the duties of a Supreme Court justice required a jurist to participate in riding the judicial circuit that was considered to be an arduous process (four times a year, two Supreme Court justices were required to travel to one of three federal jurisdictions and sit with federal justices during court sessions that were mostly about conflicts over matters of property and other mundane issues), and, finally, by and large, the justices did not seem to be involved in deliberating on weighty problems, and, in fact, the first Chief Justice of the Supreme Court, John Jay, spent most of his time engaged in diplomatic missions of one kind or another on behalf of Washington and, as well,

campaigned for state office (governor) in New York while serving as Chief Justice.

Perhaps because a number of aspects of being a Supreme Court justice were considered not to be all that enticing (at least from the perspective of some individuals), the quality of many – but not all -- of the people who were initially appointed to the Supreme Court often left a great deal to be desired. For instance, of the 11 individuals who were appointed to serve on the Court during Washington's tenure as President: One of those appointees was, at some point, declared to be insane; another member of the Court (James Wilson) spent time in debtor's prison as a result of having defaulting on loans borrowed for purposes of speculating on various land deals; a third appointee was impeached for showing bias during deliberations; a further justice became senile while serving on the Court; a fifth person (Robert Harrison) withdrew from the bench five days after being confirmed in order to accept the position of Chancellor in Maryland.

Another appointee to the Supreme Court – namely, John Blair, Jr. – was a friend of Washington who had attended the Philadelphia Convention. Blair was not an active participant in that Convention, and his five-year tenure on the Supreme Court was also marked by relative silence.

When Jay resigned from the Supreme Court to become governor of New York, Washington made a recess appointment (which did not require Senate confirmation) and designated associate justice John Rutledge as Chief Justice on an interim basis. Rutledge's tenure as an associate justice had been rather contentious because, once confirmed by the Senate, he refused to attend any of the sessions that were called by the Supreme Court.

In addition, Rutledge not only had proven himself to be a staunch advocate of slavery before, during, and after the Philadelphia Convention, but, as well, he believed that voting rights should be tied to having a substantial amount of property. In fact, prior to becoming a justice of the Supreme Court, Rutledge had resigned his governorship in South Carolina when the state legislature would not pass legislation that he considered to be sufficiently rigorous with respect to the relationship between owning property and being able to vote.

As a result of the foregoing issues, as well as due to a number of other problems surrounding Rutledge's possible problematic mental state (at least according to the view of Attorney General Edmund Randolph), the Senate would not confirm Rutledge as Chief Justice after the time-frame for his recess appointment ended. Rutledge resigned from the Court in 1791 and accepted the post of Chief Justice for South Carolina.

Washington's next choice for Chief Justice of the Supreme Court was Patrick Henry of Virginia. Although Henry's disquietude concerning the federal government had subsided considerably by this time, he, nonetheless, rejected Washington's invitation.

Subsequently, the President selected William Cushing, who had been appointed as an associate justice in 1790, to be the next Chief Justice. However, even though the Senate confirmed Cushing's appointment, Cushing refused the position because he felt his health and age (63) would not be up to the task.

Next up for consideration to become Chief Justice was Oliver Ellsworth from Connecticut. Not only had he been a delegate to the Constitutional Convention in Philadelphia, but, as well, he had been an active supporter of Federalism when he served in the Senate.

The Senate confirmed Ellsworth as Chief Justice. He remained in that position until 1801 when John Marshall replaced him, and Marshall continued on in that position for the next 34 years.

Notwithstanding all of the problems that President Washington encountered while trying to find reliable individuals to serve on the Supreme Court or as Chief Justice, there is something intrinsically problematic with most, if not all, of his choices. More specifically, with the possible exception of James Iredell from North Carolina, one of the primary reasons why Washington invited individuals to serve on the Supreme Court was a function of that person's loyalty to the cause of Federalism.

Washington's Supreme Court nominees were individuals who, in one way or another, had given support to the idea that the Federal government held a position of supremacy within governance relative to the role of states. Although Iredell was devoted to the Federalist cause, nonetheless, from time to time he indicated he believed that the

states had priority over the federal government in various circumstances.

Aside from their commitment to Federalism, the people who were selected to serve on the Supreme Court also shared another quality. They were strong proponents of the idea that one of the fundamental roles of government was to protect the rights of property against the activities of those who were without property, and, indeed, even Iredell had served the interests of wealthy merchants and plantation owners prior to becoming a Supreme Court justice at the young age of 38.

What is troubling about the foregoing dimensions of the Supreme Court appointees is that they seem to be in violation of Article IV, Section 4 of the Constitution. Presumably, one cannot be an advocate of Federalism as well as entertain biases in favor of property owners while, simultaneously, maintaining that one is acting in an unbiased, impartial, objective, and fair manner with respect to whatever cases are being reviewed.

For instance, consider the following case: *Chisholm v. Georgia*, that was one of the first, real, constitutional challenges to reach the Supreme Court. Alexander Chisholm was serving as an executor for an estate belonging to Robert Farquhar.

During the Revolutionary War, Farquhar had delivered uniforms and cloth to the government of Georgia. However, he allegedly had never been paid for those goods, and, as a result, Chisholm was suing Georgia on behalf of Farquhar's estate.

Georgia responded in federal district court by claiming that Georgia was a sovereign state and was immune from suits brought by individuals. Moreover, Georgia's attorney general further argued that the Supreme Court did not have jurisdiction in such matters.

Edmund Randolph -- who, despite being the Attorney General for the United States at that time, was representing Chisholm in the foregoing matter -- argued that when the Articles of Confederation were replaced by the Constitution, states lost the sovereignty that they enjoyed under the Articles, while the citizens of the United States acquired sovereignty during the period that marked the transition from being governed by the Articles to being governed by the

Philadelphia Constitution. Furthermore, Randolph maintained that Article III of the Constitution provided the Supreme Court with the necessary authority to hear cases between a state and citizens from another state.

Four out of the five judges who were hearing the case agreed with Randolph that the Court did, in fact, have jurisdiction to hear the case between Chisholm and the state of Georgia. Furthermore, James Wilson, who voiced the majority opinion in the foregoing case, argued that the term sovereignty was foreign to the Constitution and concluded that Georgia could not be considered to be a sovereign entity.

Wilson was the Court's resident expert with respect to the issue of federal supremacy versus state's rights. Yet, his opinion – with which two other justices concurred – merely gave expression to Wilson's presuppositions concerning such matters, and, therefore, could not be considered to be an impartial, unbiased, and fair judgment, and, in fact, he was serving as a judge in his own cause of Federalism.

If, as Wilson argued, the notion of sovereignty is totally unknown to the framework of the Constitution, then, there is no basis within the Constitution to determine who has sovereignty or even what that term means. Moreover, although Chisholm's lawyer, Edmund Randolph, is of the opinion that the states lost their sovereignty when the Philadelphia Constitution replaced the Articles of Confederation, there is nothing in the Constitution that specifically supports the tenability of Randolph's argument.

Rather, the Constitution indicates that in certain enumerated cases, the federal government has supreme authority, whereas in all matters in which the federal government has not been given authority or in which authority has not been withheld from the state governments, then the states have priority. The ninth and tenth amendments indicate as much, and this is so not only in conjunction with the states but, as well, this is the case in relation to the people.

There might be all manner of boundary conflicts that need to be settled as to precisely where the rights of the federal government leave off with respect to its enumerated powers and where the rights of the states (or individuals) begin. However, there is nothing in all of

this that precludes the idea of states (or individuals) being sovereign in some areas but not in others.

Within days of the Supreme Court's handing down its decision with respect to *Chisholm v. Georgia*, Congress was overrun with outraged demands from a variety of states in support of the idea of a constitutional amendment concerning the right of states to be free from interference by the Supreme Court with respect to suits between any given state and citizens of another state or foreign country. In 1794, Congress adopted the 11th Amendment (the Amendment was fully ratified by the states in 1798), and this curtailed the jurisdiction of the Supreme Court in such matters.

The original intent of the Framers might have been manifest in the majority opinion of the Court in *Chisholm v. Georgia*. However, the original intent of the people – or at least those who had vested interests in the idea of states' rights – was front and center in the 11th Amendment.

The issue of sovereignty was not settled in *Chisholm v. Georgia*. Instead, that issue continues to be an area of considerable conflict and uncertainty … both in relation to states as well as in relation to individuals.

Furthermore, although the 11th Amendment prevents the federal government from exercising its judicial power to intervene n suits between states and individuals from other states or foreign countries, that amendment says nothing about how such disputes should be resolved. The 11th Amendment does not automatically assign sovereignty or immunity to the states in such matters but only identifies who cannot resolve those issues – namely, any form of federal judicial power.

Nothing in the 11th Amendment precludes the possibility that a citizen's grand jury might be formed within a given state in order to ensure that such a state treats people from other states or foreign countries with the sort of integrity that is guaranteed through Article IV, Section 4. Moreover, while the 11th Amendment prevents federal judicial power from intervening in the foregoing sorts of cases, that amendment does not constrain either the President or Congress from being able to intervene in some fashion in order to ensure that all people – including individuals from other states or from foreign

countries – are treated in accordance with the principles of republican moral philosophy.

After all, Article IV, Section 4 indicates that the United States government shall "on application of the legislature, or of the executive (when the legislature cannot be convened)" protect states against domestic violence. This includes the sort of violence that might be perpetrated by a state against citizens from another state or against persons from a foreign country since when people from another state or from a foreign country are being denied: Justice, tranquility, a common defense, general welfare, and/or liberty, then violence is being done to those individuals.

The *Chisholm v. Georgia* case illustrates what happens if Supreme Court jurists permit their biases to shape their decisions. When this occurs, they can no longer satisfy the guarantee that is given in Article IV, Section 4 with respect to a republican form of government.

Although Article III might have given the Court jurisdiction with respect to the *Chisholm v Georgia* case, that jurisdiction did not necessarily entitle the government to decide the issue of sovereignty either in conjunction with Georgia or Chisholm. What that jurisdiction entitled the Court to do was to point out that whatever means of confliction resolution were going to be used with respect to the dispute between Georgia and Chisholm, Article IV, Section 4 of the Constitution indicated that such a process had to be impartial, objective, and fair to all parties and, as well, that states do not necessarily enjoy sovereign rights that automatically trump individual rights in such matters.

Furthermore, the Supreme Court could have used its jurisdictional authority to direct Congress to establish whatever sort of inferior court might be considered necessary to handle the foregoing sort of issue and do so on the merits of available, demonstrable evidence (For example, what evidence exists to indicate that Farquhar did, or did not, supply the state of Georgia with goods, or what evidence exists to demonstrate that the state of Georgia did, or did not, pay him for those goods?). As long as such inferior courts conducted themselves in accordance with the requirements of Article IV, Section 4, then, the decisions of those courts should be considered to be final.

Following the *Chisholm v. Georgia* Constitutional dust up, the Supreme Court became rather cautious in its activities. It tended to shy away from intervening in matters that might require it to pass judgment on the constitutionality of federal or state legislation.

Despite the Court's relative degree of inactivity between 1793 and 1797, the composition of the Court did change slightly during that period of time. For example, Thomas Johnson resigned from the Court in 1793 – apparently because he found the circuit-riding aspect of the job too demanding – and was replaced by William Patterson of New Jersey.

Patterson shared an essential feature with most of the other Supreme Court jurists who previously had been appointed by Washington. He was a committed Federalist, and that perspective shaped his work on the Court until he resigned in 1806.

Once again, it is troubling that neither Washington, nor anyone else at the time, seemed to think that appointing someone who possessed significant biases that favored giving the federal government priority in all manner of issues – perhaps even in matters to which the federal government was not entitled to such priority – did not raise any red flags. If the guarantee of Article IV, Section 4 is to be judiciously served, then, a Supreme Court justice should have no biases, one way or the other, about the issue of priority and, consequently, should decide a case on its merits rather than on the basis of preconceptions about how to engage those sorts of cases.

In other words, if circumstances warrant that the federal government should be given a form of priority to which it is entitled under the Constitution, then, so be it. However, such matters need to be decided on the basis of an impartial analysis of the relevant evidence and not on the basis of preconceived biases … after all, one can imagine possible scenarios in which even though the federal government might be considered to have jurisdictional priority in some given area of governance, nonetheless, the federal government's manner of conducting itself in that context still might not be in accordance with the principles of republican moral values and, therefore, jurisdiction or not, its conduct would still be unconstitutional because of the manner in which Article IV, Section 4 is being violated.

The final appointment that was made by President Washington during his tenure involved another individual who seemed to bring questionable qualities to the Supreme Court. More specifically, when John Blair, Jr. resigned his position on the Court in 1795, Washington appointed Samuel Chase of Maryland.

Although Chase had ardently backed Washington during the Revolutionary War, nonetheless, Washington also knew that Chase had campaigned against adopting the Constitution. Therefore, in light of Washington's tendency to select for the Court only – or mostly – those candidates who were hardcore Federalists, his appointment of Chase is something of a mystery.

The foregoing mystery deepens when one learns that it was public knowledge that Chase seemed to be a somewhat morally challenged individual. For instance, at one point in his career, Chase had been required to resign from Congress as a result of trying to manipulate the flour market through illicit means.

What was Washington thinking in conjunction with his selection of Chase for the Supreme Court? We don't know because Washington never disclosed his reasons for appointing Chase to that position.

Rather ironically, Chase was the Chief Justice of the Maryland Supreme Court at the time Washington decided to elevate him to the Supreme Court of the United States. Given Chase's dubious past with respect to his time in Congress, one wonders how he had become Chief Justice for the Maryland Supreme Court, let alone for the Supreme Court of the United States.

In 1796 -- (and again in 1800) -- Chase abdicated his Court responsibilities to assist John Adams to become the next President. While Chase had every right to vote for whomever he believed might make a good president, nevertheless, publically campaigning for someone and doing so by sloughing off one's Court responsibilities seems – on several levels – to constitute a violation of Article IV, Section 4 since not only was he – at the very least – creating the impression that he could be willing to exhibit a favorable bias toward whatever policies might arise during an Adams presidency, but, as well, he was not exhibiting a great deal of integrity or honor in the manner in which he neglected his responsibilities in conjunction with the Court, and neither sort of behavior was consonant with the

guarantee of providing a republican form of government to each state and the citizens thereof.

The foregoing concerns are not theoretical. Following Adams' election as President, Chase became a staunch advocate of certain policies that became law during Adams' Presidency.

More specifically, the British and French were engaged in war with one another at the time of the 1798 Presidential race. Adams and his Federalist supporters were pro-British, while Jefferson and his supporters were aligned with the French.

Following Adams' election, he sent a diplomatic delegation to France to see if some sort of agreement concerning a variety of issues might be reached with the French government. To make a long story short, the American delegation returned home after being subjected to some rather tawdry treatment by French officials, including an attempt to extort money from the United States.

Due to the foregoing events, sentiment in America against the French ran very high. As a result, pro-British Federalists did very well during the congressional elections of 1798.

The Federalists leveraged their newly won congressional power to push through a number of measures that were intended to deal with anyone who expressed sympathies toward the French, which included those who were referred to as Republicans and who were led by Thomas Jefferson, Adams' Vice President. Chief among the aforementioned measures were the Alien and Sedition Acts.

The Alien Act gave the President authority to deport any non-American whom he considered to represent a danger to the United States or whom he believed was engaged in activity that sought to undermine the American government. The Sedition Act enabled the government to prosecute, and, if successful, punish and/or fine -- anyone who published or made statements that were considered to be of a false, scandalous, or malicious nature and that subjected either the President or the government to ridicule or contempt.

Justice Chase was an enthusiastic supporter of the Sedition Act. While serving on the Supreme Court, he lobbied Congress to pass the bill, and once that Act became law, he eagerly pursued its application to all manner of Republicans.

Consequently, Chase was hardly an impartial and objective justice when it came to the Sedition Act. Furthermore, he also was not fair in the manner in which he dealt with cases involving that Act.

For example, one case involved John Fries who was a militia captain being tried for treason under the Sedition Act. Captain Fries had led a group of militant, Pennsylvania farmers in protest against federal tax collectors who were operating in that state.

Chase took the extraordinary step of informing Fries' lawyers before the trial even began that he was going to rule against any attempt on their part to claim that the Sedition Act violated the First Amendment's stipulation that Congress could not make any law that abridged the freedom of speech of either individuals or the press. Moreover, Chase did not even provide the pretense of conducting a fair trial in the Fries case, and, as a result, he hurriedly ran through the trial, sentencing Fries to death at the end of the trial (The sentence was revoked by President Adams when he pardoned Fries).

Unfortunately, the Fries case was not an isolated incident. Chase went after many Jefferson-led Republicans who dared to speak out against President Adams concerning this or that matter, and during those trials Justice Chase often abused both lawyers and defendants.

However, Samuel Chase was not the only Supreme Court Justice who was behaving in the foregoing manner. By 1800 – when prosecutions connected with the Sedition Act came to an end -- all six of the Justices had participated in a number of trials in which a variety of Republican sympathizers had been found guilty of violating that Act and, as a result, were either imprisoned or fined.

There also was an element of hypocrisy that permeated Chase's perspective concerning the Sedition Act. Although he was willing to use the Sedition Act to prosecute anyone whom he thought might be speaking out against the President in a false, malicious, or scandalous manner or whose words subjected the government to contempt and ridicule, when he campaigned for Adams during the 1800 election, he referred to the sitting Vice President – Thomas Jefferson – as a "dangerous Jacobin" who would inflict the worst excesses of the French Revolution upon the American people … allegations that were malicious, false, and scandalous as well as statements that subjected the Vice President – who was part of the Federal government – to

contempt and ridicule, and, therefore, constituted clear violations of the Sedition Act (unconstitutional as that law might have been).

During President Adams' lone term in office, he appointed three candidates to the Supreme Court. First, when James Wilson passed away in 1798, Adams selected a nephew of George Washington – Bushrod Washington – to replace Wilson, and, then, when James Iredell died in 1799, Adams selected Alfred Moore, a prominent Federalist, to become a member of the Court.

Finally, because Chief Justice Oliver Ellsworth was in poor health and was resigning his commission to the Supreme Court, Adams eventually settled on John Marshall as Ellsworth's replacement for Chief Justice on the Court. The nomination of Marshall was not a straightforward process because Adams' first choice was to bring John Jay back to the Supreme Court, but after first nominating, and, then, subsequently being embarrassed – at least momentarily -- by John Jay's withdrawal of the commission once the Senate had confirmed that appointment, Adams settled on Marshall who was his Secretary of State.

One of the constitutional cases with which Chief Justice Marshall's name is often most linked is *Marbury v. Madison*. That case actually began while Marshall was still serving as Secretary of State in the administration of President Adams but already had been confirmed as the next Chief Justice of the Supreme Court, and, therefore, served in both capacities until Thomas Jefferson assumed the office of President on March 4, 1801.

The backstory to the *Marbury v. Madison* court case started when President Adams misjudged the mood of the people with respect to his administration's prosecution of so many Republicans under the Sedition Act. As a result, Adams lost the 1800 election to Thomas Jefferson.

However, between the time of the election in November of 1800 and March 4, 1801 when Jefferson officially became President, President Adams and members of the lame duck Congress decided to create some difficulties for Jefferson when he assumed office. For example, Congress rammed through a Judiciary Act in December of 1800, and this was signed into law by President Adams in February 1801, just a few weeks before his tenure as President ended.

One of the primary components of the aforementioned Judiciary Act involved a reduction in the number of justices that were to serve on the Supreme Court – from six to five. The purpose of this reduction in the size of the Court was to prevent Jefferson from being able to fill an expected vacancy on the Court (many people anticipated that Justice Cushing was going to retire) with someone who was a partisan to the Jefferson-led Democratic-Republican perspective.

The intention underlying the foregoing Act (both with respect to its being passed by Congress, as well as being signed into law by Adams) constituted a violation of the provisions in Article IV, Section 4 of the Constitution. There was nothing impartial, fair, objective, or honorable about the Judiciary Act of 1800, and, consequently, the federal government had not complied with the guarantee that is present in the Constitution with respect to providing every state a republican form of government.

Similarly, if the size of the Supreme Court had been left at six, and if Cushing did retire (which he didn't), and if Jefferson did replace Cushing with someone who shared the President's political philosophy, then, such an appointment also would have violated Article IV, Section 4 of the Constitution. For Jefferson to appoint someone to the Supreme Court who shared his political biases would have been as unconstitutional as Washington's stacking of the Supreme Court with Federalist-oriented jurists had been.

Another feature of the aforementioned Judiciary Act of 1800 has greater relevance to the *Marbury v. Madison* legal case. More specifically, the foregoing Act made provisions for 45 new minor court positions (justices of the peace) to be assigned to Washington, DC, the new home of the country's capital.

Washington, DC did not have a sufficiently large population to require 45 new justices of the peace. However, the outgoing administration wanted to reward various individuals for their support of the Adams' administration over the preceding four years … even though that sort of political patronage constitutes a further violation of Article IV, Section 4 of the Constitution, both on the part of Congress, as well on the part of President Adams because the intent of those actions had little, or nothing, to do with establishing a more perfect union, establishing justice, providing for the common defense,

promoting the general welfare, or securing the blessings of liberty for the citizens (both present and future) of the country … and doing so in accordance with the principles of republican moral philosophy.

Since Jefferson would become President on March 4, 1801, Congress conspired with President Adams and Secretary of State John Marshall to confirm the 45 appointments before midnight on March 3, 1801. First, Congress would vote on each candidate, and, then, once confirmed, Congressional clerks would take the commission documents to John Marshall, who would sign them.

Although all 45 of the aforementioned confirmations were delivered to, and signed by, John Marshall, Marshall failed to have those documents delivered to the individuals who had been confirmed. Instead, the papers remained neatly piled on his desk.

On the next day, James Madison replaced John Marshall as Secretary of State. All of the duly signed documents of confirmation were now on the desk of the new Secretary.

President Jefferson directed Madison to deliver less than half (25) of the 42 appointments to the individuals indicated. Four of the candidates who did not receive their appointments sued the new Secretary of State, James Madison, and one of those would-be justices of the peace was William Marbury.

The *Marbury v. Madison* case was not heard straight away. In fact, it gathered dust for several years before finally surfacing for review because for much of those intervening months, the Supreme Court remained inactive while the federal government sought to impeach various judges – including the possibility of Supreme Court jurists – for their biased handling of many cases that had been prosecuted under the Sedition Act.

Only four Supreme Court jurists heard the *Marbury v. Madison* case. Two other jurists – namely, Alfred Moore and William Cushing -- were ill at the time, and, therefore, neither of them heard the arguments nor weighed in on the decision concerning that case.

Moreover, Justice Marshall should have withdrawn from the case. He had been Secretary of State when the 45 commissions were confirmed and, then, signed by him, and, in addition, he had failed to deliver those signed documents to the appointed individuals and,

consequently, left open the possibility that until those documents had been delivered, they had not become legal appointments.

However, Marshall did not recuse himself. Instead, he took a lead role in deciding the case, and in doing so, he violated Article IV, Section 4 of the Constitution since, among other things, he became a judge in his own cause.

As it turns out, Marshall decided that the Supreme Court should not endorse a writ of mandamus in the *Marbury v. Madison* case because the Supreme Court had no original jurisdiction in that matter but, rather, only had appellate jurisdiction concerning that case since the suit did not involve states, ambassadors, or foreign counsels. Marbury had made the mistake of filing suit directly with the Supreme Court instead of first filing his writ with a lower court, and, then, if necessary, appealing an unfavorable decision in the lower court to the Supreme Court.

Nonetheless, despite his decision, Marshall should have followed the path of recusal and avoided the appearance of being a judge in his own cause. By proceeding as he did, he ran the risk of adversely affecting people's perception concerning the integrity of the Supreme Court.

Another point to consider in the *Marbury v. Madison* case is the following one. Madison was being engaged through a "writ of mandamus" that, if accepted, empowers a judge to direct government officials to fulfill their responsibilities. However, one might argue that Madison, the new Secretary of State, was fulfilling his responsibilities by following the directive of his President with respect to the handling of the 42 commissions.

Just as President Adams and Secretary of State Marshall could have reconsidered any of the confirmed justices of the peace and decided to withdraw their support of those confirmations prior to their being delivered to the appointees, so too, President Jefferson and Secretary of State Madison had the right to reconsider those appointments and withdraw their support prior to those signed commissions being delivered. President Jefferson and Secretary of State Madison were under no obligation to complete what President Adams and Secretary of State Marshall had begun but not finished.

President Jefferson and his Secretary of State did deliver half of those signed commissions. However, for whatever reason, they believed that 17 of those signed commissions were either not warranted or were considered to be excessive.

There is no evidence to indicate that Jefferson and Madison went through the list of appointments and went on to reject 17 of them due to biases the two officials harbored against the individuals being rejected. In fact, there is an argument to be made that given how the entire group of 42 appointees were Federalist partisans, if animus toward the Federalist position had been the motivating factor in rejecting commissions, then, all 42 individuals would not have received the signed documents, and this was not even remotely the case since commissions were delivered to 25 of those appointees.

None of the foregoing considerations is what made *Marbury v. Madison* memorable. The case carries constitutional weight because of what Justice Marshall went on to say in his decision after denying Marbury's suit.

Some individuals believe that what Marshall accomplished in *Marbury v. Madison* was to set a precedent for the Supreme Court's right to engage in judicial review. While Marshall's decision did give voice to a process of judicial review, William Patterson had already beat Marshall to the starting line on that issue when Patterson indicated in 1795 during a circuit court hearing that any Congressional law that Supreme Court jurists determined to be repugnant to the Constitution should be considered to be without legal status.

What Marshall actually tried to do – and even this is implied by Patterson's remarks about the right of Supreme Court jurists to render void whatever Congressional laws were considered by them to be repugnant – was to establish that the Supreme Court had the final say about what was, and was, not repugnant to the Constitution. In short, according to Marshall, the Supreme Court – and only the Supreme Court – had the constitutional authority to invalidate the activities of both the Executive and Congressional branches of government, and, as such, the decisions of that Court became the supreme law of the land.

Although several participants in the Philadelphia Convention had talked about the issue of judicial review, and although a series of 85 newspaper articles written by Hamilton, Madison, and Jay during the

ratification process in New York (articles that later would be collected together and referred to as the *Federalist Papers*) had fleshed out the idea of judicial review somewhat, there is nothing in the Constitution that specifically indicates that the role of the Supreme Court is to determine what is, and is not, repugnant to the Constitution and, thereby, become the sole determiners of what the supreme law of the land is.

Both William Patterson and John Marshall were seeking to usurp authority for the Supreme Court to which that body was not necessarily entitled. One could acknowledge the right of the Supreme Court to engage in the process of judicial review without necessarily being forced to extend to that body the sort of supreme authority that Marshall envisioned.

For example, what if the task of the Supreme Court were to determine whether the acts of Congress or the Executive were done in accordance with the guarantee of a republican form of government that is present in Article IV, Section 4? Making such a determination would require a process of judicial review, but the scope of that review would be limited to whether, or not, the activities of Congress and the Executive Branch could be shown to have been characterized by qualities of impartiality, objectivity, integrity, honesty, fairness, honor, and selflessness.

The nature of <u>what</u> is done by Congress and the Executive is not necessarily the primary issue. The more important issues are <u>how</u> and <u>why</u> that 'what' is being done.

There are a lot of possibilities concerning what might be done in any given situation. However, if what is done does not adhere to principles of objectivity, integrity, honesty, honor, fairness, impartiality, and selflessness, then that 'what' is constitutionally impermissible.

Moreover, if what is done does comply with the foregoing sorts of principles, then, objecting to such a 'what' becomes more difficult. More specifically, the moral principles of republicanism that shape how and why something is done will place an array of constraints on, as well open up a number of degrees of freedom with respect to, what can, and cannot, be done and, thereby, not only protects people from problematic forms of public policy that busy themselves with just the

'what' of a matter and not the underlying 'how and why' of that matter, but, as well, a republican form of government entails a variety of possibilities that might be pursued as long as they are done in accordance with principles of republican moral philosophy.

By arrogating final authority to the Supreme Court with respect to the determination of what is repugnant to the Constitution, John Marshall violated Article IV, Section 4 of the Constitution. In effect, he was claiming that Supreme Court justices had the right to be judges in their own causes concerning the meaning of the Constitution.

In other words, Marshall was a staunch Federalist. This meant that he harbored biases in conjunction with his understanding of the Constitution and, as a result, he could not necessarily be impartial in his judgments. Consequently, if he were unable to free himself from his Federalist biases, his decisions would not be objective and fair, or done with integrity, and, thereby, he would become a judge in his own cause of Federalism … that is, everything would be filtered through, and distorted by, the lens of Federalism through which he perceived governance.

For instance, Marshall believed that two fundamental components of a strong national government (i.e., his version of Federalism) involved the protection of private property and the generation of economic growth. Marshall had developed the foregoing perspective earlier in his career when, among other things, he represented the legal interests of landed estates, and, then, invested his earnings from the legal services he rendered in order to purchase large tracts of land in Fairfax County, Virginia.

The land being purchased by Marshall had been under the control of, among others, British subjects, or that land had come under the authority of those to whom various British overlords had transferred that land for financial or other considerations. Originally, the British laid claim to those lands through questionable means (e.g., the alleged Divine Right of Kings to take possession of whatever they desired), and, as a result, there are an array of outstanding issues that permeate the subject of, for example, who, if anyone, is entitled to own land in the form of private property … issues concerning the nature of the Commons that have existed at least from the time of the Charter of the Forests more than seven hundred years ago (and such issues really

existed for a far longer period of time in a variety of geographical and historical venues).

In addition, one might note that Marshall's approach to economic growth involved slave labor. This means that exploitation, if not abuse, of one kind or another was consonant with his notion of economic growth.

Therefore, Marshall might have considerable difficulty demonstrating beyond a reasonable doubt that establishing: Justice, domestic tranquility, a common defense, the general welfare, as well as securing the blessings of liberty were necessarily a function of, or could only be obtained through, the protection of private property and the promotion of economic growth in his sense of those terms. Furthermore, unless the acquisition and maintenance of private property, as well as the development of economic growth, can be shown to be done through processes that are governed by qualities of impartiality, objectivity, equitability, integrity, selflessness, and so on, then both the idea of private property as well as the process of economic growth have considerable potential to come into conflict with principles that are inherent in the Preamble to the Constitution as well as in Article IV, Section 4.

Indeed, not just any notion of private property and not just any form of economic development will necessarily be consistent with the tenets of the Preamble to the Constitution or the requirements of Article IV, Section 4. Consequently, before one can make judgments about whether, or not, certain notions of private property should be protected or whether certain forms of economic growth should be promoted, one must try to determine whether that sort of property or mode of growth can be reconciled with the moral principles that are at the heart of the Constitution.

Because Marshall's perspective tended to be shaped by a number of biases concerning Federalism, private property, and economic growth, one legitimately could question his ability to be able to properly – that is, fairly and objectively -- engage the process of judicial review. In other words, if Marshall were seemingly blind to the way in which his own Federalist orientation failed to conform to principles of republican moral philosophy, how could he be expected to make judicious decisions about whether, or not, the activities of

Congress and the Executive were compliant with the requirements of Article IV, Section 4?

In *Marbury v. Madison*, Marshall decided that the Supreme Court had the authority to regulate the activities of Congress and the Executive Branch. While there is a sense in which the Supreme Court can legitimately regulate those activities, such regulation is a function of Article IV, Section 4 and not because Supreme Court jurists have any special insight into what the meaning of the Constitution is independently of considerations of republican moral philosophy.

According to Marshall, the Supreme Court gets to say, in some ultimate way, what the law is. Moreover, apparently, the only way in which the judgment of one group of Supreme Court jurists can be overruled is if some subsequent group of Supreme Court jurists reaches a decision to that effect.

Notwithstanding the fact that a few delegates to the Philadelphia Convention talked briefly about the issue of judicial review, and notwithstanding the fact that certain passages within what became known as *The Federalist Papers* further developed, to a small degree, the notion of judicial review, and notwithstanding the fact that William Patterson indicated that the Supreme Court could void any Congressional action considered to be repugnant to the Constitution (without specifying what the criteria were for determining that sort of repugnancy), and notwithstanding John Marshall's claim that the Supreme Court has the authority to say what the law is, none of the foregoing considerations concerning judicial review are actually spelled out in the Constitution. What is specified in the Constitution is the Federal government's guarantee to give every state – and their inhabitants – a republican form of government, and such a form of government is rooted in a moral philosophy that emphasizes qualities of: Impartiality, objectivity, fairness, integrity, honor, selflessness, as well as an unwillingness to serve as a judge in one's own cause … and if the foregoing considerations involving moral qualities that spring from, and are rooted in, Article IV, Section 4 do not frame and permeate the American form of governance, then such governance is rudderless and free to drift wherever and whenever the prejudices, biases, interests, and ideological currents running in Supreme Court Justices take that process of governance.

What is truly shocking about the *Marbury v. Madison* decision is that no one questioned the alleged validity of Marshall's judgment concerning the scope of the duties of the Supreme Court. One can agree with Marshall's determination that the Supreme Court did not have original jurisdiction with respect to Marbury's writ of mandamus and, therefore, that case needed, first, to be heard by a lower court before, if necessary, it could be appealed to, and heard by, the Supreme Court, but Marshall's belief that the Supreme Court had the ultimate authority to determine what the nature of the law is does not appear to be Constitutionally defensible.

Marshall should not have been permitted to get away with making the foregoing kind of determination because that decision has legally, politically, economically, and socially skewed what has transpired in the United States since that time (topics to be explored in a subsequent chapter). In other words, a very bad and problematic precedent was established through the *Marbury v. Madison* case because instead of judging legal cases in accordance with principles that actually are inherent in the Constitution (namely, the republican form of government that is guaranteed through Article IV, Section 4), Supreme Court jurists have been encouraged by Marshall's manner of reasoning in *Marbury v. Madison* to generate decisions that often are based on all manner of arbitrary biases, partisan politics, and philosophical or religious constructions concerning 'the' alleged meaning of the Constitution and who has the right to generate those meanings.

Many of the so-called Framers of the Constitution (including one of its prime architects, James Madison) believed they were creating a form of governance that consisted of three separate but equal branches of government. Marshall, however, disagreed with all of those individuals and arbitrarily claimed that the United States government consisted of three branches of governance that were not even remotely equal since only one facet (i.e., the Supreme Court) involving just one of those branches – i.e., the Judiciary – got to say what the law is.

Marshall had created a legal fiction. In other words, he arbitrarily invented a legal theory of the Constitution (namely, that Supreme Court Jurists were responsible for determining the meaning of the Constitution), and, then, imposed that way of looking at things onto the

Constitution and insisted – without actually justifying his assertion -- that everyone else should engage the Constitution in the same manner, and, moreover, he did so in order to be able to filter the Constitution through his brand of Federalism and sought (through his legal opinion) to induce others to do so as well.

After the Republicans swept into office during the federal elections of 1800 as a result of President Adams' miscalculations concerning the nature of the public's mood with respect to the issue of the prosecution of Republicans under the Sedition Act, many newly-elected Republicans began to talk about the possibility of taking measures to deal with aforementioned Sedition Act prosecutions that had taken place during the administration of John Adams. As a result, John Pickering, a federal district court judge for the District of New Hampshire was impeached by the House in 1803, and, then, tried and convicted by the Senate on March 12, 1804.

Apparently, Pickering was mentally disturbed, if not insane. Consequently, quite apart from his participation in the potentially unwarranted prosecutions under the Sedition Act that might have been perpetrated by Pickering, there already were justifiable grounds for removing Pickering from the bench.

However, some important questions swirl about the impeachment, and subsequent conviction, of John Pickering. For example, if the motivation behind removing Pickering from the bench was to exact revenge of some kind, then, any person in the House who, due to such a motivation, voted to impeach Pickering or any individual in the Senate who shared that sort of motivation and, as a result, voted to convict Pickering would have been guilty of violating Article IV, Section 4 of the Constitution and, consequently, their votes should have been voided.

Yet, given the foregoing set of circumstances, which individual or body had the authority or responsibility to make the foregoing sorts of determinations vis-à-vis Article IV, Section 4? The Supreme Court would only have original jurisdiction if states, ambassadors, or foreign counsels were involved in those proceedings, and, therefore, that Court can be brought into the matter only on an appellate basis.

However, since the Senate is conducting a trial, it constitutes an inferior court relative to the Supreme Court. Presumably, this means

that the verdict of the Senate concerning matters of impeachment could be appealed to the Supreme Court.

The basis for any such appeal would be a matter of whether, or not, the members of the House, while issuing an order of impeachment, or the members of the Senate, when making their determination of guilt, had exhibited behavior that might be considered to have been sufficiently devoid of the qualities (such as impartiality, fairness, integrity, objectivity, and so on) that are guaranteed under Article IV, Section 4 of the Constitution. Once again, the primary source for guiding the manner in which the Supreme Court conducts its business would be primarily a matter of determining the nature of how and why something is done by government officials when measured against the principles of republican moral philosophy.

The foregoing possibility gives rise to a much trickier problem. What happens if the individuals being impeached and convicted are members of the Supreme Court?

The foregoing question is not a theoretical matter. Almost immediately after Pickering had been found guilty, the House proceeded with the impeachment of Supreme Court Justice Samuel Chase. Since most of the other members of the Supreme Court also had participated in conducting prosecutions of Republicans under the Sedition Act, if the Senate were to find Chase guilty, then, the stage might be set for Congress to proceed to remove a number of other Supreme Court jurists from the bench as well.

If so, to whom would a Supreme Court justice appeal if such a person had been impeached and convicted by Congress? And, if there were no individual or body to whom that justice might appeal, wouldn't this mean that such an individual is being denied a form of due process (i.e., the right to appeal) that, as previously noted, could be made available to other individuals through the Supreme Court?

Under the scenario outlined above, even though Senate convictions of impeached individuals might normally be appealable to the Supreme Court, if the individual who is impeached and convicted is a Supreme Court justice, shouldn't other justices who work with that individual recuse themselves in those instances? Furthermore, given that the Senate's conviction of Justice Chase might have implications

for whether, or not, other members of the Supreme Court who participated in the prosecution of Republicans under the Sedition Act might, then, face impeachment by the House as well as a trial in the Senate, wouldn't the issue of recusal be of paramount importance in relation to the members of the Supreme Court?

Yet, if the members of the Supreme Court were required to recuse themselves in such cases, then, who would hear the appeal of one, or more, members of the Supreme Court? Presumably, Congress would have to pass a law that established an inferior court of some kind that would be activated to hear an appeal process if members of the Supreme Court were faced with a potential conflict of interest and, as a result, had to recuse themselves in relation to appeals to the Supreme Court by a member of that Court.

Justice Marshall wrote a letter to Samuel Chase concerning the latter individual's pending trial before the Senate. Marshall raised the possibility that, perhaps, it might be better if Congress were to overturn the convictions that had occurred in conjunction with the Sedition Act rather than convict Supreme Court justices and remove them from the bench. Although members of Congress never became privy to the contents of the aforementioned letter and, as a result, never learned how Marshall had entertained the possibility that the Supreme Court need not always be the ones who have the final say with respect to the implementation of the laws of the land, nonetheless, by writing what he did, apparently, Marshall did not realize that Congress, as well as the President, already had the authority (under Article IV, Section 4) to overturn any conviction that violated the guarantee of providing a republican form of government as Chase's judgments in a variety of Sedition Act cases surely did, and, moreover, as long as the process through which such reversal of convictions were generated did not violate Article IV, Section 4, then, the Supreme Court had no Constitutional basis to interfere with those reversals.

President Jefferson had put forth a suggestion to the House leader -- a Republican -- that, perhaps, Chase should be impeached for the latter's prosecutorial misconduct in conjunction with the Sedition Act. However, at the same time, Jefferson was afraid that impeaching Chase might be construed by the public and/or the Federalists as giving

expression to an act of political revenge, and, consequently, Jefferson didn't want to be seen as the individual who was instigating the impeachment process and, therefore, indicated to the House leader that he (Jefferson) shouldn't be further involved in the matter.

Either what Chase did when prosecuting Republicans under the Sedition Act was consonant with the principles inherent in Article IV, Section 4, or those actions were not consonant with those principles. Was Jefferson so unclear about the nature of his own motives in the matter, as well as so afraid of what others might think of his judgment concerning the issue, that he was reluctant to argue that the behavior of Justice Chase constituted a gross violation of the Constitutional provisions contained in Article IV, Section 4 and, as a consequence, Chase should be removed from his position as Supreme Court Justice?

Despite Jefferson's nominal withdrawal from the problem, nonetheless, as indicated previously, the House went ahead with the impeachment of Justice Chase, and, then, the Senate tried Chase. However, although the Republicans in the Senate outnumbered the Federalists by a tally of 25 to 9, and, therefore had more than enough votes to produce the necessary two-thirds majority to generate a conviction, the Senate did not produce the requisite majority in any of the eight articles of impeachment with which Chase had been charged.

What is one to make of the fact that a Republican dominated Senate did not convict Justice Chase for exhibiting bad behavior in the prosecution of Republicans under the Sedition Act. Either Chase had done nothing wrong in connection with respect to those prosecutions or in relation to his public diatribes against Jefferson during the 1800 election season and, consequently, deserved to be exonerated of all charges, or, for whatever reasons, the Senate failed to fulfill its responsibilities in the matter. If the latter possibility is the case, then, either the Supreme Court or some inferior court should be empanelled to investigate the conduct of those Senate members (whether Republican or Federalists) who voted for acquittal in order to determine whether, or not, their votes constituted possible violations of the moral requirements inherent in Article IV, Section 4.

Of course, if governance is not to be caught up in an endless loop, then critical investigations concerning the propriety of governmental conduct and behavior must come to an end at some point. However,

whether that terminal juncture comes in the form of a dynamic involving some combination of: The People, the President, Congress, the Supreme Court, and/or some inferior court/grand jury type of arrangement that has been authorized to have oversight concerning matters that are under the purview of Article IV, Section 4, nevertheless, in all such cases, the principles that are guiding the foregoing processes are necessarily rooted in a republican moral philosophy that gives expression to qualities such as: Impartiality, objectivity, fairness, honesty, integrity, honor, selflessness, and not serving as a judge in one's own cause.

As indicated above, the Supreme Court is only one possible medium through which to critically explore whether, or not, the guarantee of Article IV, Section 4 is being observed in conjunction with any facet of government activity. Moreover, in light of the foregoing considerations, Chief Justice Marshall's claim that the Supreme Court is the final arbiter of what constitutes the law cannot be Constitutionally justified except in the sense that the Supreme Court -- like all other branches of government, together with the people – should be dedicated to the proposition that governance must operate in accordance with the requirements of Article IV, Section 4 in order to: Form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty for present and future generations.

According to Article I, Section 10 of the Constitution, no state can pass any law "impairing the obligation of contracts". However, there appears to be nothing in the Constitution that prevents the federal government from doing so, provided that the nature of that impairment is done in accordance with, among other things, the requirements of Article IV, Section 4.

If, for example, contractual obligations arise as a result of some form of duress, deceit, or injustice, then, the principles inherent in a republican form of government that are guaranteed to every state and the citizens thereof take precedence over the alleged sanctity of contractual obligations. Consequently, contracts are not absolute in nature but are subject to the requirements of Article IV, Section 4.

Contracts also must be capable of being reconciled with the principles inherent in the Preamble to the Constitution. If a contract conflicts with the establishment of: Justice, tranquility, the common defense, the general welfare, or being able to secure the blessings of liberty, then the obligations entailed by that kind of a contract are of questionable importance when measured against the sort of fundamental Constitutional provisions that have been noted in the last several paragraphs.

As soon will become evident, the issue of contracts played an important role in the development of America … but not always in a constructive fashion. This is especially the case when it comes to contracts involving land deals, since, in many cases, contracts involving the purchase of land were given priority – incorrectly, I believe -- over other more fundamental dimensions of the Constitution, and, as a result, that sort of priority has pushed America into problematic territory.

For example, during John Marshall's tenure as Chief Justice of the Supreme Court, the size of the United States tripled in size. The foregoing expansion of territory was the result of: (a) the Louisiana Purchase and (b) the acquisition of Florida by way of treaty.

The Louisiana Purchase encompassed some 828,000,000 square miles of land. The territory purchased by President Jefferson extended from the Gulf of Mexico in the south, to the Canadian border in the north, and from the Mississippi River in the east to the Rocky Mountains in the west.

The provenance of the Louisiana territory is a complicated one. Initially, France laid claim to that area of the New World.

Nothing except a self-serving arrogance and ignorance entitled France to make the foregoing kind of claim. However, making those sorts of claims was typical of the manner in which world powers conducted themselves at that time (meaning that such conduct was a customary way of behaving, but customary behavior does not necessarily entail a right or entitlement to act in that manner), and, usually, those claims were made with little, or no, consideration given to whether, or not, the lands being claimed might already be inhabited by people who were not subjects of the country making those claims.

In 1762, France decided to cede the Louisiana territory to Spain. At the time, Spain was a declining power and, consequently, it largely ignored the lands that had been ceded to it.

The ceding of land to which one is not necessarily entitled is similar to the claiming of land to which one is not necessarily entitled. In both cases the individuals doing the ceding or making the claims rely on unproved assumptions concerning the nature of one's rights with respect to that – in the present case land – to which one is not necessarily entitled.

In 1801, Spain had aligned itself with France against England, and while so aligned, entered into a secret treaty with France. Part of that agreement involved ceding back to France the territory that France earlier had ceded to Spain.

In early 1803, representatives of France asked Robert Livingston – the U.S. minister to France – if the United States might be interested in purchasing the Louisiana territory. Shortly thereafter, an arrangement was forged in which the United States agreed to pay France $11,250,000 dollars directly, as well as to assume responsibility for paying an additional $3,750,000 dollars in outstanding claims that had been made by various American citizens against France.

Nearly two decades after the Louisiana Purchase, the United States added Florida to its landmass through the Adams-Onis Treaty of 1819 (also known as the Transcontinental Treaty). The treaty was ratified in 1821.

The foregoing agreement required Spain to cede its claims involving East Florida to the United States, as well as to renounce its claims with respect to West Florida and the Pacific Northwest. In exchange, the United States would acknowledge Spain's sovereignty over Texas, and, in addition, the United States would pay $5,000,000 dollars in damages to Spain … damages that accrued when American citizens rebelled in Spanish controlled East Florida … a rebellion that helped precipitate the crisis which led to the Adams-Onis Treaty.

However, Spain was no more entitled to occupy Florida or be granted sovereignty in Texas than France was entitled to lay claim to the Louisiana territories. Furthermore, the United States was no more entitled to be ceded East Florida by Spain or lay claim to West Florida

than the United States was entitled to assume control of the Louisiana territory by paying France $15,000,000 dollars.

Laying claim to land, ceding land, withdrawing claims about that land, exchanging territory for money, and making treaties concerning the disposition of various lands gives expression to the business or game that is conducted from a perspective that arbitrarily assigns rights and entitlements to some people (e.g., Americans and Europeans) while withholding those sorts of rights and entitlements from other people (e.g., indigenous peoples). Almost as soon as the foregoing contracts and treaties were signed, first Jefferson, and, then, later on, Andrew Jackson, began getting rid of the evidence (i.e., indigenous peoples) in order to give the impression that the lands being claimed, bought, and ceded were legitimately available for conducting all manner of American business.

More specifically, shortly after making the Louisiana Purchase, President Jefferson implemented a policy that was directed toward removing indigenous people from America's newly acquired "property". After all, if the American people were going to be able to expand westward, then, the land into which they were expanding should be rid of those who might object to that sort of expansion.

When not being killed, indigenous peoples were forcibly pushed westward by the military. The vacated land became subject to an array of grants, contracts, speculations, and schemes.

Various state legislatures entered into binding contracts with different individuals. As a result, land was granted to private individuals in exchange for certain considerations.

Once land was granted to private citizens, it became subject to a succession of transactions in which the title to that land passed from person to person. All of those transactions were considered to be contractual in nature, and as indicated previously, according to Article I, Section 10 of the Constitution, states were not permitted to pass legislation that would impair those contractual obligations.

However, there is an element of the fruit of the poisonous tree that is present in the foregoing sort of land transactions. In other words, when evidence is introduced into a criminal case but, subsequently, that information is shown to have been acquired through

unconstitutional means, then, whatever legal arguments rest on that "evidence" is considered to be the fruit of a poisonous tree, and, therefore, whatever conclusions are based on that evidence no longer have any validity. Similarly, if an initial process of claiming, ceding, or granting land can be shown to have a questionable provenance, then, whatever subsequent transactions or contracts that presuppose the legitimacy of those claims, grants, or ceding transactions are like the fruit of the poisonous tree in the aforementioned criminal case and, as a result, their validity should be called into question.

If Thomas Jefferson, among others, had been more mindful of the requirements inherent in Article IV, Section 4, then, he might have resisted the urge to purchase the Louisiana territory. That purchase lacked the sort of impartiality, objectivity, fairness, integrity, and honor that Article IV, Section 4 guarantees to the people of the United States.

Jefferson knew before he made the foregoing purchase of land that there were people already living in the territory that he was purchasing who were not U.S. citizens. Such prior knowledge was the reason why his pogrom to remove indigenous peoples from that territory began, in earnest, shortly after Jefferson made arrangements to acquire that land.

If he had purchased the Louisiana territory without knowing that indigenous people inhabited that land, he would not have implemented his policy of moving – if not killing -- indigenous peoples who lived in that land. The fact that he did put his policy of eradication into effect almost as soon as the Louisiana Purchase was complete indicates that he knew what he was doing … displacing people off land to which the United States was not necessarily entitled despite entering into a contract with France to purchase that territory.

Consequently, the Louisiana Purchase violated the Constitution's guarantee of providing the states with a republican form of government. By purchasing land from France to which France was not necessarily entitled, and by seeking to push indigenous peoples from that land once the land had been purchased, Jefferson conducted himself in a manner that any objective, impartial, fair, honorable individual would see to be inconsistent with the republican moral philosophy that, supposedly, was at the heart of the U.S. Constitution.

Unfortunately, Jefferson – as were many other government officials (both at the federal and state levels) -- was steeped in the assumptions of a colonialist mentality. As a result, he, along with many other Americans, believed that countries such as France and the United States enjoyed privileges to which indigenous peoples were not entitled. Those who operate from such a bigoted perspective tend to offer all manner of untenable rationalizations as to why people with power should be entitled to conduct themselves in ways that are immoral.

One can't justifiably lay claim to land of questionable provenance. One can't justifiably sell land of questionable provenance. One can't justifiably purchase land of questionable provenance. One can't justifiably cede or grant land of questionable provenance.

Yet, contracts involving the issues of land ownership that were of questionable provenance could be found almost everywhere in North America. The Supreme Court's first encounter with the foregoing sorts of contracts arose in *Fletcher v. Peck* (1810).

In the mid-to-late 1790s, the Georgia state legislature granted approximately 35 million acres located west of the Yazoo River to four private companies. The land encompassed most of what, subsequently, would become Alabama and Mississippi plus some additional territory as well.

The foregoing four companies were required by the Georgia state legislature to pay less than two cents per acre. Those companies, then, proceeded to sell the land for 10 cents an acre, thereby, reaping more than a 400% return on their investment.

Even before getting into the *Fletcher v. Peck* legal matter, the foregoing arrangement raises several questions. For example, one might ask about the nature of the basis on which Georgia rested its claim of ownership concerning those 35 million acres since, ultimately, the legitimacy of that claim seems rather tenuous because it gives expression to an arbitrary set of colonialist and monarchal assumptions concerning who – if anyone -- has the right to lay claim to land and, in the process, not only runs counter to the idea of sharing the Commons that has historical roots in the Treaty of the Forests that took place more than 500 years before Georgia was even granted official existence by King George II in 1732, but as well, runs counter to

the basis on which Georgia was founded by a group of twenty-two trustees (led by James Oglethorpe) who agreed not to permit anyone to make a profit from the territory being established.

Another set of questions also arises in conjunction with the aforementioned grant of land to four companies. Why, for instance, were those particular set of companies selected to be the recipients of such largesse from the Georgia state legislature?

As it turns out, there, apparently, was a fair degree of collusion taking place between various members of the state legislature and the four private companies. Legislators were being paid (i.e., bribed) by those companies to vote in favor of the transfer of millions of acres for less than two cents an acre.

Residents of Augusta, Georgia were so outraged by the foregoing bribery scandal that they marched on the state capital seeking to hang the corrupt officials who were involved in the Yazoo land deal. In a somewhat more successful and restrained fashion, the voters of Georgia peacefully removed all but two legislators from their offices in an electoral response to the corruption that had been occurring within the Georgia state legislature.

Furthermore, in 1796, the new state legislature passed a law that annulled the original purchase of the 35 million acres to the four private companies. However, there were certain individuals who had innocently purchased property on behalf or, or who had invested in, one of the four, corrupt companies and, as a result, brought suit for the purpose of validating the contracts through which title to the property that had been purchased.

Robert Fletcher from New Hampshire and John Peck of Massachusetts were reputed to be two of those sorts of individuals. Fletcher had purchased title to a parcel of land located in the Yazoo River territory that had been sold to him by John Peck who worked for the New England Mississippi Company.

The Georgia legislature had passed a law that prevented judges in that state from hearing suits connected to the Yazoo land scandal. However, irrespective of whether, or not, the state legislature had the authority to prevent judges from hearing such cases, and even though the 11th Amendment prevented the Supreme Court from interfering in

matters involving contractual obligations, there is nothing in the 11th Amendment that prevents the two other branches of government – namely, the Executive and Congress – from seeking to address the Yazoo issue.

More specifically, Article IV, Section 4 indicates that the federal government operates under the requirements of a guarantee that, among other things, shall protect each state, and the citizens thereof, against invasion. The nature of the sort of invasion mentioned in that section of the Constitution is not specified, but easily could encompass financial and economic forms of invasion, as well as physical, military-oriented kinds of invasion … especially given that the purposes for which most physical invasions are pursued is in order to acquire economic and financial considerations of one kind or another.

The foregoing possibility notwithstanding, apparently, Fletcher and Peck agreed to move forward with their suit in accordance with the provisions of Article III in the Constitution that assigns jurisdiction to federal courts in relation to suits involving citizens from different states (in this case, New Hampshire and Massachusetts).

Conceivably, however, there might have been a conflict between, on the one hand, the 11th Amendment and, on the other hand, Article III of the Constitution. Although that Amendment refers only to suits in law or equity involving citizens of one state and the government of another state or to suits that were initiated by citizens or subjects of a foreign state in conjunction with a given state, and, therefore, does not specifically mention cases involving citizens from two different states, nonetheless, the spirit of the 11th Amendment might be construed to extend to any instance in which the federal judiciary sought to intervene in events that might be considered to pertain to the internal affairs of a state … especially if some aspect of the federal judiciary should seek to award lands supposedly owned by one state to a citizen from another state.

Ironically, Supreme Court Justice James Wilson -- who had played a role in the *Chisholm v. Georgia* decision that had precipitated the actions of a number of states to bring about ratification of the 11th Amendment -- was also mixed up in the *Fletcher v. Peck* case. Wilson -- who spent time in debtors prison as a result of failing to pay off loans associated with his investments in the Yazoo land scandal -- was also

involved in illicit attempts to do an end-around the aforementioned annulment legislation enacted by the Georgia state legislature that voided the state's sale of 35 million acres of land to four private companies.

More specifically, Wilson sought out "innocent" buyers to purchase parcels of property that were part of the 35 million acres in the Yazoo territory. Even though the original sale of land between the Georgia state legislator and four private companies originally was riddled with corruption and bribery, nonetheless, Wilson believed that if a person subsequently brought that property with no knowledge of its illicit provenance, then, that individual could be considered to be an "innocent" party and, therefore, the sale of property to such an individual would be valid.

Fletcher v. Peck took a number of years to finally reach the Supreme Court. The first time the case surfaced in the Court was 1809, and, then, somewhat inexplicably, the case was re-heard in 1810.

Marshall wrote the Court's decision for *Fletcher v. Peck*. In that decision, he glossed over the problematic history that permeated the Yazoo land deal and merely claimed that Georgia was entitled to conduct those sorts of transactions.

Leaving aside the issue of whether, or not, Georgia was entitled to control 35 million acres simply because King George had given it permission to do so when he recognized the state's charter in 1732, nevertheless, there still is a substantial problem inherent in Marshall's claim that Georgia was entitled to conduct the transactions it did. Under Article IV, Section 4, the federal government is obligated to provide a republican form of government to each state, but one wonders how that sort of obligation could be properly satisfied if the federal government knowingly permitted state governments to act in corrupt ways.

One also wonders how the federal government could be said to be fulfilling its guarantee of providing a republican form of governance in conjunction with each state if it prevented citizens of the United States to have the opportunity to seek some form of natural justice by endorsing – or passing over in silence -- the decision of the Georgia state legislator to prevent state judges from hearing cases connected to the Yazoo land deals. Presumably, even if – per the 11th Amendment

-- the federal judiciary could not intervene in suits involving matters of law or equity between a state and a citizen of another state, there doesn't seem to be anything to prevent either the President or Congress from being able to instruct state legislatures to cease and desist from seeking to deny people the right to pursue natural justice through the state court system since the illicit interference of state legislators in state court proceedings constitutes an obvious violation of Article IV, Section 4 whose provisions the federal government is Constitutionally obligated to provide to each state.

Article IV, Section 4 is not just about how the federal government goes about its business. Article IV, Section 4 also requires the federal government to ensure that state governments act in accordance with that Constitutional provision as well.

To: Establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, or secure the blessings of liberty is simply not possible if state governments are permitted to do whatever they like in the administration of their affairs. Part of the guarantee of Article IV, Section 4 requires the federal government to ensure that everyone – on both a federal and state level – is operating in accordance with the principles (such as: Impartiality, objectivity, integrity, fairness, honesty, and refraining from acting as a judge in one's own cause) that are inherent in republican moral philosophy … and, again, if one feels that the foregoing considerations are not part and parcel of Article IV, Section 4, then, both the Constitution and state government become devoid of anything of substantive value and, instead, become battlefields for conflicting and competing arbitrary ideological claims in which the winner of those internecine battles gets to impose terms on everyone else.

When Georgia annulled the original contracts of sale to the four companies, the state was claiming that it was a sovereign entity and, as such, could restructure (or void) contracts and was not subject to any Constitutional constraints in that regard. However, Marshall argued in his decision for *Fletcher v. Peck*, that Georgia is not a sovereign entity and, consequently, Georgia's act of annulment does not have priority over laws involving contracts that establish rights for the participants (whether individuals or states) in those contracts.

Marshall's denial that Georgia enjoyed any sense of sovereignty reflected James Wilson's assertions in the 1793 *Chisholm v. Georgia* decision in which Wilson said that the idea of sovereignty is not to be found in the Constitution. However, as was pointed out earlier in this chapter, if the Constitution does not mention the issue of sovereignty, then, neither Wilson nor Marshall have any grounds with which to justify denying Georgia, or any other state, some degree of sovereignty as long as the exercise of that sovereignty does not interfere with the federal governments implementation of its enumerated powers.

In any event, Georgia's sovereignty is not the issue. Even if one grants Georgia some degree of sovereignty – subject to the limitations imposed on that sovereignty by the Constitution as a function of the enumerated powers assigned to the federal government – nonetheless, a sovereign state government does not have the right to arbitrarily deny sovereign citizens the opportunity to seek remedies for whatever injustices might have been perpetrated against them as Georgia did when it instructed its state courts to refrain from hearing cases associated with the Yazoo land deals.

Moreover, the issue entailed by *Fletcher v. Peck* is not a matter of contract law versus state sovereignty. Rather, the issue at the heart of the *Fletcher v. Peck* suit is whether, or not, that case was being handled (on the federal level or the state level) in accordance with the requirements or principles of republican moral philosophy that are Constitutionally guaranteed to every state and its citizens.

While one might agree with Marshall's claim in his decision that both Robert Fletcher and John Peck were "innocent" purchasers of property in the Yazoo land deals, nonetheless, those contracts were the fruit of a poisonous contractual tree. Consequently, innocent, or not, those deals were not permissible because they were based on, and rooted in, the original corrupt land deals between the Georgia state legislature and four private companies, and, as a result, they had no legal validity or legitimacy.

As noted previously, John Marshall's espoused a brand of Federalism that was strongly biased in favor of giving priority to property rights and contractual rights over any form of regulation. The foregoing biases not only enabled him to ignore the dimensions of corruption that were present in the *Fletcher v. Peck* suit, but, as well,

his ideological commitments blinded him to the way in which he was serving as a judge in his own Federalist cause of giving priority to the rights of property and contracts over the right of people to be governed in accordance with the requirements of a republican form of government.

Marshall was not an impartial, objective, fair judge who treated the *Fletcher v. Peck* case with integrity and honesty. As a result, his decision in that case violated Article IV, Section 4.

Like Marshall's decision in *Marbury v. Madison*, there is no valid legal precedent that was established by Marshall in *Fletcher v. Peck*. In each of the foregoing cases, Marshall apparently failed to understand that the requirements of Article IV, Section 4 have Constitutional priority over the biases concerning property, contracts, and judicial supremacy that are inherent in his Federalist ideology, and, therefore, his decisions constitute a conceptually poisonous tree from which no valid, Constitutional, inferential fruit might be plucked since, as has been argued throughout this chapter, Marshall's analysis of those cases was fraught with issues of ideological bias that permeated and tended to warp and skew his sense of judicial judgment and reasoning.

Although the Supreme Court's opinion in *Marbury v. Madison* is the judicial decision that is often most associated with the name of John Marshall, there are many legal commentators who believe that Marshall's opinion in *McCulloch v. Maryland* carried far more momentous implications for the way in which governance was pursued in America than *Marbury v. Madison* did.

Maryland had passed a law that sought to levy a tax ($15,000) on banks not chartered by the state. The only bank that fell into this category was a Baltimore branch of the 2nd National Bank that had been chartered by Congress in 1816.

James McCulloch was a cashier for the aforementioned Baltimore branch. When presented with the bill for the foregoing levy by the state of Maryland, he refused to pay it, and, as a result, Maryland sued the bank.

Not surprisingly, Maryland courts decided the case in favor of the state of Maryland. Consequently, McCulloch appealed the decision to the Supreme Court.

Daniel Webster and William Pinkney argued the case before the Supreme Court on behalf of the Baltimore branch of the 2nd National Bank. Luther Martin represented the state of Maryland.

One of the issues at the heart of *McCulloch v. Maryland* dated back to an argument that had taken place between Alexander Hamilton and Thomas Jefferson during Washington's first term as President. The difference of opinion revolved about the issue of whether, or not, the formation of a national bank was constitutionally permissible.

Although the idea of a national bank did not appear among the enumerated powers of Congress that are listed in Article I, Section 8, Hamilton wrote an opinion concerning the issue and sent those ideas to Washington. The gist of Hamilton's position was that the powers of Congress were more extensive than the ones that were specifically mentioned in Article I, Section 8.

Hamilton maintained there were "implied powers" in the Constitution. He deduced this from the "necessary and proper" clause with which Section 8 concluded – namely, that Congress was entitled "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

Since Hamilton considered the formation of a national bank to be "necessary and proper" for being able to actualize or execute the powers that were enumerated in Article I, Section 8 of the Constitution -- along with other powers that the Constitution had vested in the federal government -- Hamilton argued that even though a national bank was not specifically mentioned in the Constitution, nonetheless, it was a necessary and proper way to bring about the execution of whatever powers were enumerated. He believed that in the absence of a national bank, the government would be unable to effectively exercise the powers it did have.

Jefferson wrote a counterargument for President Washington in response to Hamilton's plan for a national bank. In essence, Jefferson argued that a national bank was neither necessary nor proper because, first of all, the idea of a national bank had not been mentioned in the Constitution, and, in addition, Jefferson felt there were other ways of

financially underwriting and giving expression to the enumerated powers of government.

The foregoing difference of opinion rested on what could be shown to be "necessary and proper". If Jefferson were correct and there were effective ways of financing the government's enactment of its powers that were not dependent on establishing a national bank, then, Hamilton could not argue that a national bank was necessary since there were viable alternatives to his idea. Alternatively, in order for Hamilton to be able to win the foregoing argument, Hamilton would have to be able to demonstrate that there were no other means of enabling the government to be able to exercise its enumerated powers except by means of a national bank.

At the time, neither Jefferson nor Hamilton had the facts to back up their respective positions. Consequently, even though Jefferson had not provided the proof that Hamilton's idea was neither necessary nor proper, Hamilton could not justifiably argue that proceeding forward with the sort of legislation that would form a national bank was constitutionally "necessary and proper".

Despite the absence of evidence, President Washington endorsed Hamilton's position concerning a national bank and rejected Jefferson's arguments on that same issue. As a result, Congress moved ahead with legislation to establish a 20-year charter for a national bank and Washington signed that bill into law.

By enacting such legislation, both Washington and Congress might have violated Article IV, Section 4 of the Constitution. In other words, there seems to be little, if any evidence, to demonstrate that the decision to proceed with the foregoing sort of legislation was done in an impartial, objective, and fair manner or that the bank, once established, was run in a manner that prevented the government from making judgments concerning the bank's operations that served the biases and vested interests of the government and, therefore, meant that government officials (through their use of the national bank) had become judges in their own ideological causes.

Five years after the charter for the first national bank expired, a second 20-year charter for a national bank was issued by Congress and signed into law by President Madison. Although Madison claimed that he signed the bill into law because the general will of the country was

in favor of that legislation, in reality, Madison was succumbing to various economic lobbies that wanted to be able to use the national bank to further their interests.

The reasons for establishing the 2nd national bank do not resonate with the republican form of government that is being guaranteed to the states, and their people, in Article IV, Section 4. The reasons of Congress and Madison were not necessarily impartial, objective, fair, selfless, or conducted with integrity.

Moreover, due to the problematic ways in which the 2nd national bank conducted its business, that mode of operation did not comply with the moral principles inherent in the republican form of government that had been guaranteed to the people of the United States. The 2nd national bank should either have been terminated or reformed because the bank's operations were not consonant with, or reflective of, the principles inherent in Article IV, Section 4 of the Constitution.

When Daniel Webster and William Pinkney argued before the Supreme Court on behalf of McCulloch in the *McCulloch v. Maryland* suit, they both relied heavily on Hamilton's correspondence with President Washington. As a result, they emphasized the necessity and propriety of a national bank, as well as the idea of Constitutional "implied powers".

When Luther Martin argued the other side of the case on behalf of the state of Maryland, he included excerpts from a speech that John Marshall – who was now hearing the case -- had given during the Virginia ratification convention that was held in 1788. During the latter speech, Marshall maintained that the Constitution did not entitle the federal government to enact laws on every subject and, even more importantly, that the federal government could not exceed the enumerated powers that the Constitution had given to it.

Unfortunately for Martin, Justice Marshall seemed to have undergone a change in his thinking between 1788 and 1819 concerning the matter of "implied powers". Writing for the majority opinion of the Court, Marshall addressed two questions: (1) Does the Constitution grant Congress the authority to charter a national bank? (2) If such authority does exist, do states have the right to tax a national bank?

Marshall admitted that the idea of a national bank does not appear among the enumerated powers of Congress. However, in contradistinction to his remarks during the 1788 ratification convention in Virginia, Marshall maintained in his Supreme Court decision that it was inconceivable that a Constitution should be expected to list every power to which Congress was entitled and that, instead, a constitution was only supposed to give expression to the general features of the powers inherent in a constitution, and, then, one could make deductions based on those general features concerning any number of particulars that were not specifically enumerated in the Constitution but which, nonetheless, were implied by, or followed from, the general features that were specified.

Many participants in the ratification conventions had voiced concerns about whether, or not, the federal government might seek to extend its powers beyond those enumerated in the Constitution. Again and again, Federalists – like Marshall -- sought to allay those worries by reassuring convention participants that the powers of the government were delimited by the fact that those powers were strictly enumerated.

The foregoing concerns carried over into the Congressional discussion about the adding of amendments to the Constitution that had been initiated by James Madison in Congress. The 10th Amendment specifically addresses the foregoing sorts of concerns by stipulating that: “The powers not delegated to the United States by the Constitution, nor prohibited to it by the states, are reserved to the states respectively, or to the people.”

Now, in effect, Marshall was implying (he didn’t directly address this issue in his decision) that the 10th Amendment might be entirely devoid of any substantive meaning. After all, apparently, there were all manner of powers that were implied in the Constitution because they could be shown – or so it was claimed -- to be “necessary and proper” to the running of the country, and, therefore, it was anybody’s guess as to exactly what powers had not been delegated to the United States by the Constitution or what powers had been prohibited by it to the states since there might be an endless array of possible implied powers lurking in the Constitution that were deducible via the “necessary and proper” clause.

As if asking a rhetorical question, during the writing of his judicial opinion, Marshall wondered why the Framers had never qualified the enumerated powers with the sort of specific language that would have prevented anyone from positing the possibility of powers existing beyond those enumerated powers, and in response to his own question, he remarked that "we must never forget that it is a constitution we are expounding."

On might suppose that the foregoing comment by Marshall was intended to allude to the idea that a constitution is a dynamic document that is capable of adapting to changing historical, economic, political, legal, and social circumstances. Nonetheless, Marshall was quite wrong with respect to the issue he raised in his rhetorical-like question about why – apparently -- the Framers had not placed specific restraints on the enumerated powers listed in the Constitution.

To begin with, the terms "necessary" and "proper" both place constraints on the nature of the enumerated powers that can be exercised by Congress, in particular, or the federal government in general. One has to be able to demonstrate that a process or practice is necessary before incorporating it into the framework of governance, and the criteria for establishing necessity are rather rigorous in character. Furthermore, the republican principles inherent in Article IV, Section 4 involve criteria for determining whether a given practice, process, or power is 'proper' because in order to be proper, those practices and powers, must have been derived through demonstrably impartial, objective, fair, honorable, and selfless procedures.

In addition, the Preamble to the Constitution also places specific constraints on the exercise of enumerated powers. In other words, unless the use to which a given power is put can be demonstrated to help: Establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty both for present, as well as, future generations, then the exercise of power – even when enumerated – stands in violation of Article IV, Section 4.

According to Marshall, something can be considered to be "necessary and proper" under the following conditions: "Let the end be legitimate, let it be within the scope of the constitution, and all means

which are appropriate, which are plainly adapted to the end, which are not prohibited, but [are consistent] with the letter and spirit of the constitution, are constitutional." Unfortunately, the foregoing statement is almost useless due to its vagueness.

For example, Marshall begins by assuming that the intended outcome of what is "necessary and proper" is legitimate. How does one determine the legitimacy of any given outcome?

What are the criteria to use in determining that sort of legitimacy? How does one justify the use of those criteria rather than some other set of criteria for establishing whether, or not, a given outcome can be considered to be legitimate?

A second condition for determining what is "necessary and proper" is to assume that the end of a given law or policy to be within the scope of the constitution. Again, one would like to know what the criteria are for establishing what is within the scope of the constitution, and, as well, one would like to know the basis for justifying the use of those kinds of criteria.

Finally, Marshall indicates that all the "means" that are required for something to be "necessary and proper" should be appropriate and "plainly adapted to the end and are not prohibited". In addition, those ends should be consonant "with the letter and spirit of the constitution".

Unfortunately, Marshall does not explain what the nature of the metric is for measuring appropriateness or measuring the extent to which some law or policy is "plainly adapted to the end" or purpose that is entailed by some given law or policy. Furthermore, he doesn't provide an account of how one goes about determining what the spirit of the constitution is or how one would justify such a process of determination.

One of the reasons why Marshall's thinking might have undergone a change between 1788 (his stated position during the Virginia ratification convention that were repeated by Luther Martin during the 1819 Supreme Court hearing) and 1819 (the year in which he gave his decision in *McCulloch v. Maryland*) could be due to the fact that Marshall was now into his 18th year of holding power in the Supreme Court, and, as a result, he had become enamored with the fact that he

could continue to impose his Federalist ideology on the rest of the country that began with his decision in *Marbury v. Madison*. For Marshall, terms and phrases such as: "legitimate," "within the scope of the constitution," "means" that were "plainly adapted to the end," "which are not prohibited," and which were consistent "with the letter and spirit of the constitution" must necessarily be viewed through the lens of his virulent form of Federalism, and, as a result, he considered that perspective to be entirely proper.

Marshall wasn't spelling out a detailed justification for his perspective. Rather, he was stating a tautology.

Everything of conceptual value – at least as far as Marshall was concerned – is contained in his initial premise concerning Federalist ideology. Given that initial premise, Marshall believed that everything that he considered to be necessary and proper for exercising the powers (both explicit and implied) of government followed from the initial premise.

Marshall was not stating a legal argument. He was positing a political ideology and trying to pass it off as a legal argument.

In 1788 Marshall believed in Federalism but he had no real power – other than actively participating in the ratification process – to ensure that his vision for America might become a reality. By 1819, he had accrued to himself (via *Marbury v. Madison* and other decisions of the Supreme Court) a significant amount of power, and he leveraged that power to shape how he wanted America to be governed.

His understanding of what was "necessary and proper" were a function of his Federalist ideology. However, that understanding was a violation of Article IV, Section 4 of the Constitution because there was little, or nothing, that was impartial, objective, fair, or selfless in his judicial judgments and, as a result, Marshall was engaging in nothing more than serving as a judge in his own cause of Federalism … something that was inconsistent with a republican form of government.

The final aspect of Marshall's decision in *McCulloch v. Maryland* dealt with the issue of whether, or not, a state – in this case, Maryland -- was entitled to levy a tax against the national bank. According to Marshall, the Constitution was the supreme law of the land, and,

therefore, the provisions of that document controlled what the states could and couldn't do.

One thing that the states could not do was to place constraints on the manner in which the federal government exercised its powers. In the case before the Court, the power being exercised was the operations of the national bank.

More specifically, Marshall maintained: "That the power to tax involved the power to destroy". Consequently, if the states were permitted to be able to tax the national bank, then, Marshall believed that they had within their power the ability to destroy the national bank and, thereby, interfere with the federal government's exercise of its power.

Almost everything has the power to destroy if it is permitted to go too far. Therefore, the question that must be asked is whether, or not, the tax being levied against the national bank by the state of Maryland gives expression to destructive forces or whether that tax might have a constructive role to play.

The foregoing issue raises some questions concerning Marshall's previously noted views on constitutional supremacy. The supremacy clause doesn't specify that the federal government has priority over state governments, but, rather, the supremacy clause indicates that the Constitution gives expression to the supreme law of the land.

There are three sets of conditions that law must satisfy in order to be considered constitutional and, therefore, have priority over every other facet of governance. First, every federal law must be capable of simultaneously serving the principles set forth in the Preamble to the Constitution … that is, those laws must either contribute to the advancement of: Establishing justice; ensuring domestic tranquility; providing for the common defense; promoting the general welfare, and securing the blessings of liberty for present and future generations, or, at the very worst, not undermine the degree to which those principles already are established.

If a government policy provides for the common defense at the expense of establishing justice or being able to ensure domestic tranquility, then, that policy is not serving the Constitution but undermining it. If a federal law ensures domestic tranquility but

diminishes the blessings of liberty, then, once again, such a law is not consonant with the requirements of the Constitution.

Secondly, the manner in which the foregoing five principles of the Preamble are defined or understood cannot be a function of someone's political, philosophical, economic, or religious ideology. This is where Article IV, Section 4 enters the picture.

Each of the five principles of the Preamble to the Constitution must be engaged through qualities of: Impartiality, objectivity, fairness, honesty, selflessness, and integrity. If this is not the case, then, government officials – whether they represent the Executive, Congressional, or Judicial branches – will be serving as judges in their own ideological causes and, therefore, will not be able to satisfy the guarantee of a republican form of government that is given in Article IV, Section 4.

Thirdly, what the federal government can, and can't, do is constrained by the principles that are inherent in the Amendments. To provide just two examples of how the federal government is not supreme – while the Constitution does enjoy supremacy – consider the 9th and 10th amendments.

The 9th amendment stipulates: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." The 10th amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited to it by the states, are reserved to the states respectively, or to the people."

Clearly, the foregoing two amendments indicate that the federal government is only supreme in certain areas – namely, those functions that involve specific enumerated or delegated rights, together with those powers that have not been prohibited to the states. Beyond the horizons of those enumerated, delegated, and prohibited functions are realms of power that belong to the states and to the people and with which the federal government might not interfere.

Consequently, Marshall is wrong when he claims in the *McCulloch v. Maryland* decision that the nature of the Constitution is such that the federal government has absolute supremacy over the states and the people. Not only are the areas of federal priority relative to the states

delimited by what is enumerated, delegated, and prohibited by the Constitution, but, as well, even those areas of enumerated, delegated, and prohibited powers must abide by the constraints that are placed on the exercise of those powers by the principles present in the Preamble, Article IV, Section 4, as well as the Amendments.

Moreover, to say, as Marshall does in his judicial opinion, that "the power to tax involves the power to destroy" is not sufficient to demonstrate that the levying of a tax on the national bank by the state of Maryland seriously impedes or undermines the ability of the federal government to exercise its powers. Marshall must provide a detailed analysis of how the Maryland tax interferes in a critical way with the functioning of the national bank rather than just forming part of the cost of being permitted to do business in the state of Maryland.

Is one to suppose that the national bank should not have to pay rent or any of its other bills because such costs, like taxes, interfere with its capacity to exercise its functions properly? Couldn't one construe those taxes as assisting in promoting the general welfare or ensuring domestic tranquility or securing the blessings of liberty for the people of Maryland?

Isn't satisfying the foregoing principles of the Preamble part of what it means for the federal government to guarantee a republican form of government to the states and the people thereof? Moreover, since the levying of taxes by a state against a national bank is not specifically prohibited to the states by the Constitution, then, under the 10th Amendment, wouldn't the potential to levy the foregoing sorts of taxes constitute one of the powers that is reserved to the states as long as that tax cannot be shown to be capable of seriously interfering with, or destroying, the ability of a national bank to fulfill its functions?

How one would go about determining and evaluating the metric through which to engage the foregoing considerations is largely a matter of methodology and empirical data. Marshall's claim, on the other hand, that the power to tax involves the power to destroy is more akin to Chicken Little running about making unsubstantiated claims than it is to a pronouncement that is solidly rooted in viable methodology and a reliable analysis of available empirical data.

Once again, Justice Marshall failed to establish a sound legal precedent in conjunction with respect to any facet of his decision for

McCulloch v. Maryland. Like all of his other legal opinions on behalf of the Supreme Court, Marshall's decision in the *McCulloch v. Maryland* suit was merely an elaboration of his Federalist ideology, and, therefore, did not satisfy the conditions inherent in the guarantee that is present in Article IV, Section 4.

Let's turn to the notion of contracts. Marshall's first encounter with the issue of contracts arose in the 1810 *Fletcher v. Peck* case that involved the sale of land associated with the corrupt Yazoo land deals in the state of Georgia. Despite a variety of problems that were contained in his judicial opinion (problems that have been outlined earlier in this chapter), Marshall argued, among other things, that states do not have the right to impair, alter, or interfere with, contractual obligations.

His second tussle with the issue of contracts arose during 1819 in the *Trustees of Dartmouth College v. Woodward*. Several questions were embedded in the details of that case.

First, is a corporate charter merely a contract by another name? Secondly, does a state have the authority to alter the nature of that sort of an arrangement?

In 1769, King George III issued a corporate charter to the Reverend Eleazar Wheelock in conjunction with a New Hampshire charity in the form of a school that was intended to introduce native peoples to, and inform them about, Christianity. The school was originally founded in 1754, fifteen years prior to a charter being issued.

According to the terms of the aforementioned royal charter, a board consisting of twelve trustees would oversee the operations of the school. In addition, the charter indicated that the board could perpetuate itself indefinitely through the selection of new trustees to replace individuals that had been appointed earlier.

Although kings were in the habit of doing many things, and while the granting of royal charters was among the many things they did on a fairly regular basis, nonetheless, the authority of King George: Began to be challenged by the colonists during the 1770s; was totally repudiated by the colonists through means of the Revolutionary War in which American forces were victorious, and was completely

nullified in a legal sense by virtue of, first, the Articles of Confederation, and, then, the ratification of the Philadelphia Constitution.

So, one of the issues that needs to be settled in conjunction with the royal charter that was granted to Rev. Wheelock concerns the status of that charter in relation to, say, March 4, 1778 (when the Articles of Confederation were ratified by New Hampshire). From that date, onward, the New Hampshire government and the people of that state no longer recognized the authority of King George III, and, therefore, this would seem to raise a few questions concerning the validity of the royal charter that had been granted to Rev. Wheelock.

Whatever charter arrangement existed between King George III and Rev. Wheelock ended on March 4, 1778. Whether, or not, the school would be permitted to continue its activities would depend on what the state would allow the school to do.

One facet of the royal charter that might be challenged by the state of New Hampshire was whether, or not, it was in the interests of the people of New Hampshire for the school's board of trustees to be able to renew itself indefinitely without any input from, or legislative oversight by, the state government.

King George III – who was the one granting the charter – had the authority and power to revoke the terms of the school's charter at his discretion. For instance, although the royal charter enabled the board of trustees to renew its membership indefinitely, nonetheless, if the king were to discover, for example, that some, or all, of the trustees were working against the interests of England, then, the king could withdraw the charter that had been granted previously.

Another provision of the royal charter entitled the President of the school – namely, Rev. Wheelock – to be able to name his own successor. When that time came, the Reverend selected his son, John, to replace him as President of the school.

There is some question as to whether, or not, the President of the college was still entitled to name his successor after March 4, 1778. After all, the King's authority in New Hampshire was relatively tenuous at that point.

In any event John was more interested in politics than in religion. He recently had decided to devote himself to Republican causes.

Due to John's lack of religiosity, the 12 trustees that had been appointed by the elder Wheelock decided to remove the younger Wheelock from his position as President of the school. As a result, two questions swirled about the actions of the Board of Trustees – (1) Was the authority of the royal charter that created the Board of Trustees still valid, and (2) Even if that authority was still valid, did the board of trustees have the right to remove John as President given that the same royal charter enabled a sitting President of the school to name a successor?

The governor of New Hampshire, William Plumer, was a Republican. He objected to the removal of John Wheelock – a fellow Republican – and campaigned to have state legislators change the conditions of the Dartmouth charter so that the people of the state could, under certain conditions, have some degree of public control over the way in which the administration of the college – including the Board of Trustees -- conducted itself.

As a result, in 1815, the New Hampshire state legislature passed a bill that, among other things, increased the size of the Board of Trustees from 12 to 21 members. In addition, the 1815 legislation created a Board of Overseers who, after being instantiated at the college, overruled the previous Board of Trustees' removal of John Wheelock as President of the college.

The original 12 members of the Board of Trustees launched a suit against William Woodward who had been selected to be secretary for the newly created Board. The aforementioned 12 individuals claimed that the royal charter issued by King George III was actually a contract that initially was between England and Rev. Wheelock, and, then, was between the state and Dartmouth College.

A king can change the conditions of a royal charter unilaterally at any time. This degree of freedom is not written into the charter, but everyone involved in the transaction understands that the nature and validity of that arrangement is at the discretion of the king and no one else.

When the state of New Hampshire ratified the Articles of Confederation on March 4, 1788, the authority of King George III in relation to whatever charters previously had been granted in New Hampshire ended. King George III had been the authorizing agent, and, now, New Hampshire no longer acknowledged the legitimacy of that authority and, therefore, the state of New Hampshire became the authorizing agent for such charters.

A charter does not bring two parties of equal rights and power together. A charter is a function of the legal authority of just one of those two parties that possesses the power to enable a charter to come into existence.

Contracts came into being quite independently of central governments. Governments became involved with contracts in order to regulate them, and, thereby, establish order and stability with respect to their execution.

The origin of charters, on the other hand, was not independent of government. Private parties could not generate charters but had to wait for the government to grant them.

There are many similarities between charters and contracts. However, a major difference between the two is how they come into being in the first place.

Private parties can generate contracts. They cannot generate charters but must be granted such permission by a central or local authority.

Furthermore, a charter is not an offer. Instead, charters specify the conditions that are set by the enabling agency and that become incumbent on another party in order for the latter party to be permitted to provide whatever service is specified by the charter.

A charter is a governmental permission. A contract is a negotiated instrument, compact, or arrangement worked out by two parties.

A charter is a relationship in which one party provides the authority or permission that enables another party to render services of a certain kind. A contract, in contrast, consists of a mutual exchange of authorizations or permissions in which certain considerations are accepted as an outcome in relation to the offer that initiates the process of exchanging authorizations and permissions.

A contract specifies the conditions through which a given exchange of considerations is to be rendered. A charter is rooted in a legal authority that makes a given service possible at all quite independently of matters of consideration.

A charter can exist without any element of consideration being present for either the government issuing agency or the party being granted such a charter. A contract cannot exist without the presence of those considerations.

The legal authority for creating a charter belongs only to individuals or institutions that are responsible for governance, and each charter constitutes a new creation. Contracts, on the other hand, presuppose an already existing set of legal permissions that establish the conditions under which those permissions become active.

As was true with respect to King George III, so too, when a state is the one issuing a charter, the nature of the relationship is one of asymmetry in which the state provides the legal authority or permission that enables certain individuals to offer certain services under specified conditions. The one who is authorized to offer those services must be enabled to do so by someone or some thing that has the power and authority to make such a service possible.

New Hampshire replaced King George III as the repository of power that made any given charter in New Hampshire possible. The existence of Dartmouth College was predicated on an authorization or a permission that was extended -- first by King George III, and, then, by the government of New Hampshire -- to a group of people for purposes of providing a certain service (education) and, as such, was not the result of a contract entered into by, on the one hand, either King George III or the state and, on the other hand, Rev. Wheelock or Dartmouth College.

The Board of Trustees of Dartmouth College lost the first round of their suit in state court. However, the members of the Board retained Daniel Webster – an alumnus of Dartmouth – to argue on their behalf before the Supreme Court.

Webster didn't argue contract law. Instead, he talked about the idea that charters were inviolable entities that should not be subject to the vagaries of changing political opinions.

Webster was not stating a legal argument. There was no legal precedent indicating that charters were of an inviolable nature.

Furthermore, Webster was engaging in hyperbolic speculation concerning what the problematic outcome of a charter might be if the state were permitted to constrain the activities of those who had been granted a charter. One could just as easily be concerned with the problems that might arise if an individual or group were considered to be inviolable and, therefore, beyond the regulatory control of the people.

Charters had always been subject to the whims of the sovereign – whether that be in the form of a monarch or a state – through which such permissions had been granted. If a monarch wished to revoke a charter, there was nothing that anyone could do to prevent the monarch from doing as he or she pleased, and Webster could not cite one historical example that demonstrated how the idea of a charter constituted something that everyone recognized to have, and be accepted as having, an inviolable nature.

According to Webster, corporation charters were contracts that existed between the state and the entity (i.e., the corporation) to which permissions were being granted. By contrast, fifteen years earlier -- in 1894 -- Marshall had argued in *Head & Armory v. Providence Insurance Company* that corporations owed their existence to the act of a legislature and only enjoyed the powers and capacities that were extended to it by that legislature, and, therefore, presumably were subject to the wishes and interests of the legislature that created corporations, just as previous charters had been subject to the wishes and interests of the monarch that had given those sorts of permission existence.

Now, however, despite participating in the *Head & Armory* case and espousing a totally different point of view, Marshall's thinking concerning the idea of corporate charters had gone through a transformation, just as his thinking had undergone a change between 1778 and 1819 with respect to the issue of "implied powers" in the *McCulloch v. Maryland* case. According to Marshall: "It can require no argument to prove that the circumstances of this case constitute a contract."

To claim that no argument is required in order to prove something is the case is to assume one's conclusions. This is argument by assertion.

Joseph Story, Marshall's colleague on the Supreme Court, stated in a concurring opinion that the Dartmouth charter provided the original trustees with "vested rights" that could not be altered by the state legislature. Yet, like Marshall, Story was creating a legal fiction through mere assertion – that is, he was stipulating that something was true and relevant in order to resolve a legal issue before the court in a manner that resonated with the ideological inclinations of the two justices with respect to their willingness to call upon contract law to serve and protect the idea of private property.

The notion of "vested rights" is rooted in English common law and was intended to prevent government officials from interfering with private business arrangements among individuals. However, English common law is not the Constitution, nor does the Constitution necessarily endorse English common law, and, therefore, one wonders what applicability a notion from English common law has for the *Trustees of Dartmouth College v. Woodward* suit.

English common law is extra-constitutional. Nobody in America voted to accept that body of law, but, instead, American judges and justices often borrowed from English common law and incorporated those ideas into their decisions and, in the process, entirely, by-passed the Constitution that, supposedly, is the supreme law of the land.

For Story to call upon English common law to help adjudicate the *Trustees of Dartmouth College v. Woodward* case is tantamount to saying that justices have "implied powers" that entitle them to borrow from legal systems that are external to the U.S. Constitution. Yet, nowhere in the Constitution are there even remote allusions being made to the existence of those sorts of judicial powers.

One doesn't need to resort to English common law precedents in order to be impartial, objective, fair, honest, selfless, or to have integrity during the adjudication process. One simply has to be impartial, objective, fair, honest, selfless, and have integrity in the manner through which one seeks to advance the principles inherent in the Preamble.

Story called upon English common law to resolve the foregoing case. He should have adhered to the requirements inherent in Article IV, Section 4 of the Constitution, and since he failed to do so, his opinion fails to establish a valid precedent for American legal jurisprudence.

In his decision, Marshall stressed that corporate charters were immortal in character. They were immortal because the continuous succession of corporate officers or trustees that occurred in accordance with the corporate charter was like an "immortal being" or "artificial person" (the legal fiction of an 'artificial person' had been recognized in law at least from the time of William Blackstone in the mid-to-late 18th century).

Furthermore, since by mere assertion, Marshall had defined corporate charters as being contractual in nature, then, the nature of the relationship between that "artificial person" and the state constituted a perpetual contract. After all – as Marshall supposedly established in the *McCulloch v. Maryland* case (but, in fact, as previously pointed out, did not successfully do so) -- states did not have the authority to interfere with contracts, and, therefore, once a state granted such an "artificial person" a corporate charter, the state was not free to alter the conditions of that charter because it was a contract.

Marshall and Story were completely arbitrary in the manner in which they adjudicated the *Trustees of Dartmouth College v. Woodward* suit. They both were interested in protecting private property, and they both were ideologically committed to a form of Federalism in which states had few, if any, rights.

Without justification, they introduced legal fictions into their opinions – either in the form of an idea (i.e., namely, "vested rights") from English common law or in the form of the idea of an "artificial person" – in order to give the impression that their arguments were legal in nature, when, in reality their opinions were purely political in character.

In other words, they both were imposing onto the Dartmouth case their political ideas about private property having primacy over every other Constitutional consideration. Yet, they advanced nothing in their opinions to indicate that private property was the key to: Forming a

more perfect union; establishing justice; ensuring domestic tranquility; promoting the common defense (especially in relation to those who owned no private property); promoting the general welfare, or securing the blessings of liberty both in the present and for future generations.

Neither of them had done anything to demonstrate that corporations were, in fact, contractual in nature rather than the result of having been granted existence by the state. Story asserted – without demonstrating – that charters conferred "vested rights" rather than giving expression to permissions that were created by the state, and Marshall asserted –without demonstrating – that corporate charters were really a matter of "artificial persons" entering into perpetual contract with the state and, as such, were not subject to being impaired in any way by the state rather than being legal entities that were entirely the creation of the state and as such were subject to be altered at the discretion of their creator – the state.

The fact that Supreme Court Justices issue decisions is not what gives validity to those decisions. The source of validity depends on whether, or not, those decisions give expression to the Constitution's guarantee of a republican form of government.

The judicial opinion offered by Marshall, and the concurring opinion provided by Story, in the matter of the *Trustees of Dartmouth College v. Woodward* failed to live up to the guarantee of Article IV, Section 4. The proof of their failure is given expression through the tortured nature of their arguments to make charters contractual in nature and to resort to arbitrary references in English common law or to the arbitrary invention of "artificial persons' in order to advance their political agenda concerning the protection of private property to further the interests of the powerful and financial elite while interfering with the: Forming of a more perfect union; establishing justice; ensuring domestic tranquility; providing for the common defense, promoting the general welfare, and securing the blessings of liberty for all those who did not own private property or who might be disadvantaged by the existence of inviolable "artificial persons" with "vested interests."

Marshall and Story were not impartial in their deliberations. They were not objective or fair during the process of adjudication, and,

using the Supreme Court to further their Federalist political agenda lacked integrity.

They were serving as judges in their own cause. Their cause was not the trustees of Dartmouth College, but, rather, their cause was to illicitly empower corporations to have "vested interests" and, thereby, become contractual entities, and their cause was to illicitly enable corporations to be considered as "artificial persons" that were perpetual and inviolable in nature (I.e., beyond the control of the state or the people) and, consequently, what they did in the Dartmouth case violated Article IV, Section 4 of the Constitution.

Article I of the Constitution empowers Congress: "To regulate commerce with foreign nations, and among the several states, and with the Indian tribes." A conflict involving the regulation of commerce clause first appeared before the Supreme Court in the guise of the 1824 *Gibbons v. Ogden* case.

Thomas Gibbons and Aaron Ogden had been granted rights to operate steamboats between New York and New Jersey by a company that initially was owned by Robert Livingston and that had been granted a chartered monopoly by the New York State legislature. Later on, Livingston ran the chartered company in conjunction with Robert Fulton whose inventive mind had helped improve the performance of steamboats, and, then, subsequently, Livingston and Fulton decided to grant Gibbons and Ogden rights to operate steamboats between New York and New Jersey.

Eventually, the business relationship between Gibbons and Ogden ran aground, and, as a result, they each fought for control of the company they once co-ran. At some point during the dispute, Gibbons acquired a federal permit that was authorized under the 1793 Coastal Licensing Act and permitted him to operate the steamboat service, while the New York State legislature recognized Ogden as being entitled to run the company.

Subsequently, Gibbons negotiated an agreement with Cornelius Vanderbilt that sought to compete with Ogden's New York steamboat service by operating a ferry service on the Hudson. Ogden successfully sued Gibbons and Vanderbilt in the courts of New York.

Gibbons appealed the New York decision to the Supreme Court. He maintained that his federal permit had priority over the New York title held by Ogden.

John Marshall delivered the Court's unanimous opinion in the foregoing case. Marshall began that judicial decision by stipulating that contrary to the arguments put forth by Ogden's lawyer, the idea of commerce transcends acts of merely buying or selling goods and includes the process of navigation as well.

He indicated that the foregoing understanding of commerce reflected the views of the Framers of the Constitution. However, there is nothing in the historical records concerning the Philadelphia Convention that substantiated Marshall's position.

Nonetheless, with his newly minted definition of commerce fresh in hand, Marshall went on to indicate that Congress alone had the right to regulate commerce, including the process of navigating "among the several states". Consequently, the New York legislature had exceeded its authority in granting Ogden a title to operate a service between New York and New Jersey.

If Congress has been given the power to regulate commerce, did the Marshall Court have the right to meddle with the definition of "commerce"? One could argue that Marshall, as well as the other members of the Supreme Court, had exceeded their authority as justices by defining a term that fell under the purview of Congress, and, therefore, quite independently of whether, or not, the Framers of the Constitution had understood commerce to encompass the idea of navigation – something for which Marshall had no supporting evidence – the Court should have referred the matter back to Congress for final disposition.

Furthermore, while one could acknowledge that Congress is Constitutionally empowered to regulate commerce "among the several states," there is nothing in such a power to prevent Congress from recognizing the right of state legislatures to grant permission to individuals to operate a service if that service helps to advance or enhance the principles set forth in the Preamble to the Constitution … which, presumably, is the purpose for which Congress has been empowered to regulate commerce. In other words, while what state legislatures permit in conjunction with the realm of commerce is

subject to oversight by Congress, nevertheless, whenever the commercial activities that are authorized by state governments are determined by Congress to be consonant with the way in which the federal government regulates commerce, then those state activities would be permitted to continue as long as they were in accord with the principles inherent in a republican form of government.

The relationship between the federal government and state governments need not be antagonistic or entangled in power struggles. One might suppose that the ideal case for governance as a whole would be when state governments and the federal government co-operate with one another to advance the goals of the Preamble in a manner that complies with the principles entailed by Article IV, Section 4 of the Constitution.

Related to the foregoing consideration is another facet of the *Gibbons v. Ogden* case concerning whether, or not, anyone (state or federal) should have been granting monopoly rights with respect to operating either a steamboat or ferry service between New York and New Jersey. The existence of monopolies is often – but not always – antithetical to keeping costs down since without competition, there is nothing (except, perhaps, government) to prevent a monopoly from charging whatever it likes for the goods and services its offers.

The Marshall Court could have acknowledged that the Constitution empowers Congress to regulate commerce. In addition, however, the Supreme Court justices might have indicated that operating a monopoly tends to be antithetical to the requirements of Article IV, Section 4, and, therefore, by permitting both Gibbons', as well as Ogden's, companies to operate in the waterways between New York and New Jersey, this would better serve the purposes of the Preamble than does granting monopoly rights to only one of those companies and quite independently of whether that granting process is conducted through the federal or a state government

The power to regulate commerce among the several states is not an absolute right. That power must be exercised in a manner that helps realize the goals of the Preamble and does so in a way that satisfies the guarantee given in Article IV, Section 4.

Furthermore, if the foregoing goals can be accomplished through the co-operation of state and federal agencies, then the right of

Congress to regulate commerce is not being challenged by a state, but, instead, is being assisted by a state to exercise Congress' right to regulate commerce in a constructive fashion. Moreover, there is nothing inconsistent about acknowledging the power of Congress to regulate commerce while simultaneously exercising that power in a manner that encourages competition through limiting or constraining the presence of monopolistic practices by agencies that have been licensed by federal or state authorities.

The issue is not whether a company had been issued a federal permit to provide a service in accordance with Coastal Licensing Act of 1793 or whether a company had been given permission by the New York State legislature to provide that sort of service. The issue is whether Congress will exercise its power to regulate commerce in a manner that will further the aims of the Preamble to the Constitution and do so a way that reflects the requirements of a republican form of governance.

Over the last 57 pages, or so, a number of legal cases have been explored that concern key clauses within the Constitution. Among other things, the foregoing discussion has addressed issues involving the: 'Supremacy' clause; 'guarantee' clause; 'necessary and proper' clause; 'impairment of contracts' clause, and 'regulation of commerce' clause.

The present chapter also has considered the question of who gets to say what the law is. In addition, some time has been directed toward considering whether, or not, corporate charters can be considered to legitimately establish the existence of "artificial persons".

The central motif running through all of the foregoing analysis is fairly straightforward. More specifically, more often than not, the Supreme Court justices have conducted their business in a manner that not only violates Article IV, Section 4 of the Constitution in a variety of ways, but, as well, does not constructively advance the purposes that are listed in the Preamble to the Constitution and for which, supposedly, the Constitution constitutes the means through which those purposes are to be realized.

For the most part, this chapter has been limited to examining decisions that arose in the Marshall Court. However, while the focus of the foregoing discussion has been fairly limited, nonetheless, a concerted effort has been made to provide a sampling of cases that covers many of the most important clauses through which successive Supreme Courts have engaged the text of the Constitution.

The critical analysis that has taken place in this chapter is the basis for making a further contention that will be stated but, due to considerations of time, will not be defended. In other words, what has been said in this chapter is intended to serve as an exemplar for what could be said in relation to a much larger set of cases.

More specifically, I believe that if one were to continue on with the sort of critical analysis that has been provided in this chapter and apply that analysis to Supreme Court decisions that arose after the Marshall Court, then, one would discover that in the vast preponderance of those later opinions, the Supreme Court not only consistently violated Article IV, Section 4 during the process of adjudicating those cases but, as well, those decisions have tended to work against constructively advancing the purposes or goals that are inherent in the Preamble to the Constitution.

By and large, the Marshall Court established a template through which many succeeding Supreme Court justices filtered their manner of engaging the Constitution. The Marshall Court took the first kick, so to speak, at the Constitutional can, and in the process of doing so, helped frame much of what ensued in the way of judicial analysis.

Nowhere is the foregoing claim more clearly demonstrated than in the manner in which John Marshall sought to usurp control of the process for determining what the meaning of the Constitution entails during *Marbury v. Madison* and, thereby, attempted to harness the Constitution in ways that served his Federalist ideology. Subsequent justices might have sought to harness the Constitution in other ways, but many of them committed the same mistake that Marshall did – namely, they tried to get the Constitution to serve their political, religious, social, and/or economic ideologies, and in the process, not only violated Article IV, Section 4 but, as well, served purposes that did not constructively enhance or advance – in fact, often undermined -- the goals set forth in the Preamble to the Constitution.

Let me reiterate a point that has been made previously on several occasions during the course of this book. If anyone wishes to restrict the meaning of a "republican form of government" to purely structural features in which, say, three equal branches of a central government interact to create a framework for governance, then, such a way of defining things divests government of any kind of substantive, moral, non-arbitrary metric through which to gauge, and modulate, the activities of that central government.

Whenever the members of the Supreme Court, or the members of any branch of government, fail to operate in accordance with the moral provisions (e.g., impartiality, objectivity, fairness, selflessness, integrity, honor, not being judges in one's own cause, and so on) that are inherent in a republican form of government, then, the Constitution becomes nothing but a medium through which arbitrary ideologies enter into conflict with one another while the parties that advocate for those ideologies vie for power in an attempt to forcibly impose themselves (physically, socially, politically, legally, economically, religiously, and/or educationally) on other individuals. The only thing that prevents that kind of internecine war from taking place is the observance of the republican moral principles that are present in Article IV, Section 4 and are intended to help facilitate the realization of the purposes set forth in the Preamble to the Constitution.

However, by stating things in the foregoing manner, one should not suppose that republican moral principles are arbitrarily being interjected into, or projected onto, the Constitution. Those moral principles formed a considerable part of the woof and warp of the zeitgeist from which the milieu out of which the Constitution emerged was woven.

Many people – most of them lawyers and judges – suppose that the opinions rendered in judicial cases give expression to precedents of one kind or another that have a binding quality with respect to subsequent cases. In other words, precedents supposedly constrain what can and cannot be done or how things can be done with respect to subsequent legal cases.

The precise character of the binding quality of a precedent with respect to later cases is rarely spelled out. In other words, more often

than not, the ideological values that constitute the legal glue that tend to tie a given legal decision to this or that precedent are very rarely explored in any critical fashion to reveal the way in which those values tend to remove any sense of impartiality, objectivity, fairness or integrity from those decisions.

Moreover, if what is being claimed in the last 3-4 paragraphs is correct, then, many of the judicial pronouncements arising through, say, Supreme Court Justices cannot possibly constitute valid precedents because of the manner in which they violate Article IV, Section 4 of the Constitution and, as well, due to the way in which they fail to simultaneously enhance or advance the purposes set forth in the Preamble. Unfortunately, in all too many cases, making reference to various precedents gives expression to the ideological commitments of the individuals who established the original precedent and, as well, the ideological commitments of the individuals who cite those precedents.

Precedents do not tie a given set of legal circumstances to the Constitution. The only process that can tie those legal circumstances to the Constitution involves the observance of the sort of republican moral principles that are being guaranteed by Article IV, Section 4 of that document and which are the means through which the purposes of the Preamble can best be served.

In short, the only precedents of any relevance to the Constitution involve judicial acts that comply with, or give expression to, republican principles such as: Impartiality, objectivity, fairness, integrity, honor, selflessness, and not serving as a judge in one's own ideological causes. If one can demonstrate – in specific detail – how a previous legal decision exhibited qualities of impartiality, fairness, and so on, in a manner that reflects the dynamics of a current case, and does so, in a way that serves all of the purposes that are stated in the Preamble, then, one has satisfied the conditions for what constitutes a valid precedent.

However, the foregoing sorts of precedents are very rare. In fact, if the arguments being put forth in this chapter are correct, few of the decisions that have been issued through the Supreme Court meet the standards for establishing valid precedents that have been outlined above.

Moreover, under the 9th and 10th Amendments, the people have the right (since such a right has not been denied or disparaged by the enumerated powers of Congress and because such a power has not been delegated to the United States or prohibited to the states or people by the Constitution) to organize a judicial oversight committee that is entitled to review the extent to which any given Supreme Court decision satisfies the conditions for establishing a valid precedent. The foregoing oversight committees would not be able to do anything except endorse or reject those decisions.

If the Supreme Court were operating properly, that body would not be rendering decisions concerning the meaning of the Constitution. Instead, it would be passing judgment on whether, or not, various officials of the Federal government had been issuing policies or conducting themselves in a manner that was in accordance with the requirements of a republican form of government and did so in a way that served the purposes of the Preamble to the Constitution.

Consequently, the aforementioned citizens' judicial oversight committee would only be confirming or rejecting the Supreme Court's decisions concerning the nature of the process that is required for a given dynamic to be considered to be a republican form of government. If the citizens' judicial oversight committee decided to review an opinion of the Supreme Court and concurred with that opinion, then, whatever policy was being advanced by Congress or the Executive could move forward and become active, but if that oversight committee disagreed with the opinion of the Supreme Court, then, whatever legislative or executive policy was being considered would be returned to the federal agency that originally had issued that policy for purposes of reworking it in the light of the critical commentary provided by the Supreme Court and/or the citizens' judicial oversight committee.

The foregoing leads naturally to considerations in relation to what meanings are to be given to the purposes that are set forth in the Preamble to the Constitution. However one goes about defining those purposes, then, first and foremost, that process must comply with the requirements of Article IV, Section 4 of the Constitution.

In other words, justice, tranquility, defense, welfare, and liberty must be engaged in ways that are demonstrably impartial, objective,

fair, honest, honorable, selfless, and that have integrity. Furthermore, the condition of universality is at the heart of the purposes of the Preamble since those purposes are intended for everyone.

When universality is compromised, then: Justice cannot be established; domestic tranquility cannot be ensured; a common defense cannot be provided; the general welfare will be diminished, and liberty cannot be secured. Any attempt to provide justice, domestic tranquility, defense, general welfare, and liberty for some individuals in a manner that comes at the expense of other individuals in conjunction with those same purposes cannot possibly give expression to a republican form of government.

Chapter 6: The Tain of History

The tain of a mirror refers to the tinfoil or metal amalgam that comprises the lusterless or dull back surface of a mirror. That surface helps to activate the reflective potential of the glass that is joined to the foregoing amalgam.

History has the potential to serve like a tain. In other words, history often forms a gritty, lusterless surface that activates the potential of critical thought to reflect – to varying degrees of accuracy and/or distortion -- certain dimensions of life.

The history of the United States is quite revealing in the foregoing sense. It forms a surface that, among other things, enables a great deal to be realized concerning the struggle for sovereignty that has taken place in America across hundreds of years and that has become reflected in human consciousness.

For example, upon arriving in the Bahamas, Columbus noted in his log that the indigenous people (Arawaks) who welcomed him and his crew did so without armaments and, perhaps, might even have been ignorant about many kinds of weapons. Columbus concluded that those people easily could be subdued and made into servants or made into whatever else Europeans desired.

Columbus also remarks in his expedition log that he ordered his crew to forcibly capture a number of natives in order to interrogate them. The Awawaks wore tiny gold pieces in their ears, and, as a result, Columbus wanted to discover what those individuals knew about where gold might be found in the islands.

The foregoing 15th century excursion into the unknown was dedicated to the proposition of exploiting whatever was discovered. Columbus not only had been promised to receive 10 percent of whatever profits were earned in conjunction with his expedition into the New World, but, as well, he would become governor for whatever lands were conquered on behalf of Spain.

After moving through the Bahamas, Columbus sailed on to what now are known as Cuba, Haiti, and the Dominican Republic. In those locations he discovered traces of gold in local rivers … discoveries that fed the frenzied visions of gold that were dancing about in his head and in the heads of his crew.

After the Santa Maria ran aground and became disabled, Columbus took wood from that ship and built a fort on Cuba. Once the fort was completed, he left behind a contingent of men to protect his interests and the interests of Spain … whatever those might turn out to be.

Columbus also took more prisoners from the new islands to which he traveled. Eventually, he sailed back to Spain with all manner of tales concerning what he had discovered and what he believed the significance of those discoveries might be (incorrectly, he claimed to have reached Asia, somewhere close to China).

Because Columbus told his investors that the lands he discovered were awash in gold and valuable spices, he was generously outfitted for a return trip to the New World. His second expedition consisted of 17 vessels along with some 1200 men.

When the second expedition found no gold, it decided to pursue the slave trade. Some 500 native people were taken prisoner and shipped back to Spain, but 40% of those slaves died during the return journey.

In addition, Awawak natives were enslaved and forced to work in, and on, respectively, various mines and estates that had been established on the islands. Because of the terrible conditions under which the Awawaks were forced to live and work, natives died by the thousands (including through murder and suicide), and within a little over 150 years, the Awawak people had become completely decimated.

The foregoing series of events frames much of the subsequent history of Europe's encounter with the New World. Expropriation, exploitation, slavery, brutality, tyranny, murder, genocide, and militarism characterize almost everything that transpired between Europeans and the peoples of the New World – with the latter group being on the receiving end in conjunction with most of the foregoing dynamic.

Columbus' example was repeated by subsequent Spanish expeditions. For example, Cortés considered the Aztecs of Mexico to be an impediment to Spanish interests, and, as a result, he went from settlement to settlement and wiped the Aztecs out, while Pizarro employed a similar strategy in conjunction with the Incas of Peru.

In addition, the English settlers of Jamestown, Virginia considered themselves entitled to encroach upon the lands of the Powhatans. Moreover, whenever the settlers felt entitled to so – which was almost always – the settlers murdered the indigenous peoples of the region, as well as burned the homes and destroyed the crops of the latter individuals.

Furthermore, despite being interlopers, nonetheless, at different times Puritan settlers occupying various portions of Massachusetts waged war on the Pequot, Wampanoag, and Narragansett peoples simply because the latter peoples were considered by many leaders in the Puritan communities to represent obstacles to the way of life that the Puritans wanted to pursue. The foregoing sorts of wars flared up and burnt out on a number of occasions across nearly half a century.

At the heart of the foregoing expeditionary and settlement activity was a fundamental contradiction. Although many Europeans – especially the elite classes -- were ideologues when it came to the issue of private property, they apparently failed to appreciate how the processes of settlement and expropriation in which they were engaged constituted attempts to acquire resources that did not belong to them, but, perhaps, they would agree with Ralph Waldo Emerson that "foolish consistency is the Hobgoblin of little minds" … with the word "foolish" referring to anything that did not serve the interests of the European settlers and explorers.

Like settlers clear-cutting trees from a piece of land, the European invaders clear-cut millions of indigenous peoples from the Americas. Indeed, the latter sort of clear-cutting activity was considered to be a necessary prelude to the former kind of clear-cutting.

Given the foregoing considerations, Europe was not so much in the business of exporting civilization to the New World (although this might have been the delusional story it told to itself). Rather, the countries of the Old World busied themselves with exporting power, control, repression, ideology, exploitation, and greed to the New World.

Consequently, many, if not most, of the Europeans who migrated to the New World – either on a temporary or permanent basis – were rather narrowly focused on pursuing a variety of material opportunities that – at the expense of indigenous peoples -- were

provided by the New World. As a result, those Europeans struggled to acquire whatever degrees of freedom they could – again, at the expense of indigenous peoples -- in order to be able to extract as many profits and advantages as were possible with respect to the foregoing sorts of pursuits.

As a result, Europeans were not necessarily interested in developing – for themselves or others -- the sort of sovereignty that was outlined in Chapter 2 in which everyone – irrespective of race, gender, ethnicity, social status, religion, and wealth -- is entitled to have the opportunity to seek the truth of things and, in the process, come to realize the potential of his or her life. Freedom and sovereignty are not always coextensive with one another.

Indeed, reflect on the following considerations. Without any help from Europeans, indigenous peoples had discovered, among other things, how to: Make ceramics, cultivate maize, turn cotton into cloth, weave baskets, engrave copper, build dams, fashion a variety of tools, as well as construct irrigation canals and large buildings (e.g., consider the structures found in the Chaco Canyon region of New Mexico). More importantly, many indigenous peoples had developed advanced forms of social, political, and legal governance in which: Communities (for instance, the League of the Iroquois that encompassed thousands of people) were not built around the idea of private property; women occupied prominent places in society (society was arranged along matrilineal lines); children were encouraged to become independent, kind, generous, and courteous; the equality of people was actively pursued; cultural histories were stored in the form of poetry, dance, as well as song, and one of the primary purposes of society was to assist its members to achieve happiness, security and peace.

While the foregoing sorts of social, legal, and political arrangements were not present in every indigenous community (e.g., Aztec leaders sacrificed thousands of their people to appease various gods), nevertheless, the communities that were organized in the foregoing fashion were much more attuned to issues of sovereignty than were the so-called civilized Europeans. In many respects, Europeans brought nothing but unenlightened forms of governance to indigenous communities.

For instance, although many people are familiar with the African slave trade that took place in America, far fewer people know that Native peoples also formed a significant part of that process of human trafficking. In fact, the Africans being imported into the United States were often taken in exchange for Native peoples who were being exported to the West Indies and, in fact, in just one year, the city of Charleston alone accounted for the shipment of ten thousand Native slaves to the West Indies.

Of course, there had been a certain amount of human trafficking taking place in North America prior to the arrival of Columbus in which some Native groups enslaved other Native groups and, then, traded those individuals to still other Native groups for various considerations. Nonetheless, after coming to the New World, Europeans, -- with their customary capacity for efficiency – enhanced the proficiency with which the slave trade involving Native peoples was conducted to vast new heights, and one of the ways in which the Europeans accomplished this was to induce certain Native tribes to specialize in the human trafficking of other Native people.

One is reminded of the presence of Native slave trade when one reflects on the slave rebellion of 1712 that took place in New York City. During that unsuccessful rebellion, African and Indian slaves joined forces and nearly a quarter of the rebelling slaves consisted of Native people.

Furthermore, Africans were not the only individuals who continued to be enslaved up until, and including, the Civil War. Many white people throughout the Southwest enslaved considerable numbers of Pawnees, Apaches, and Navajos for much of the 19th century leading up to the aforementioned conflict.

Moving on from the issue of slavery and returning to the issue of sovereignty, one might note that on at least three occasions, various indigenous peoples approached the U.S. government with proposals directed toward permitting indigenous peoples to participate in the process of governance. For example, in 1778, the Delaware Indians advanced to the U.S. government the idea that Native Peoples should be allowed to form a separate state and join the union, but members of Congress rejected the possibility without discussion.

More than 60 years later, a group of indigenous people from Indian Territory argued that just as other territories in America were entitled to have Congressional representatives, so too, the indigenous peoples of Indian Territory should be similarly entitled. Once again, such a possibility fell on deaf ears and hearts.

A third attempt by indigenous peoples to become woven into the fabric of governance in the United States occurred following the Civil War. Although the foregoing proposal also was rejected, in 1907 the United States did consent to allow Indian Territory to be incorporated into the United States in the from of a state – namely, Oklahoma – that was controlled by white people and in which native peoples were largely marginalized.

Obviously, for much – if not most – of its existence, successive national governments of the United States have had no intention of extending the opportunity for any kind of sovereignty to Native peoples. Apparently, only white people (and, then, only some of them) are entitled to have the opportunity to be, or become, sovereign.

Over the years, there were a number of religious groups – including Shakers and Quakers – who advocated that Native peoples should be treated fairly. Moreover, there were notable individuals such as Roger Williams in the 1630s and Helen Hunt Jackson in 1881 who also spoke out on behalf of Native peoples but, unfortunately, their efforts either went unheeded or were met with considerable hostility (Williams eventually had to flee to Rhode Island for making statements – such as acknowledging that Native peoples had the right to the land -- that ran afoul of Puritan interests.).

In 1862, William Fessenden, a Senator from Maine, captured the hypocrisy inherent in the attitudes of many white people with respect to their treatment of indigenous peoples when he commented on a suggestion by a senator from Oregon who wanted to move the Nez **Percé** Indian nation from its lands in order to accommodate the thousands of white people who had infiltrated and settled those lands. Senator Fessenden indicated that while Oregon apparently had no difficulty in protecting the property of white people (or at least some of them), similar protections were not extended to Native peoples.

Between 1790 and 1830, the population of the United States increased by nearly 10 million people. By 1840, almost half of those

individuals had crossed the Appalachian Mountains and pushed into the Mississippi Valley.

Prior to 1820, well over a hundred thousand indigenous people were estimated to have inhabited the area into which the foregoing settlers were pouring. Nearly 25 years later, the number of Native people remaining in the area had been diminished by three-quarters of the original population when most of these latter individuals were forced to migrate westward.

When Thomas Jefferson was Secretary of State in the administration of George Washington, Jefferson not only maintained that Indian populations should be left alone, but, as well, he indicated that settlers who encroached on the territories of the Natives should be removed from those lands. After becoming President in 1800, Jefferson began an aggressive campaign to have Cherokee and Creek peoples removed from the lands they were occupying in Georgia.

Furthermore, following Jefferson's purchase of the Louisiana Territory in 1803 (which, except for the colonialist chutzpa of the French and the Americas, the French did not have the right to sell and the Americans did not have the right to buy because all manner of Native peoples already were inhabiting that territory), Jefferson proposed a policy in which Native peoples would be encouraged to abandon hunting and settle down on small tracts of land and become farmers who – like other farmers – would accrue debt in order to run their farms and, then, be induced to pay off that debt by ceding land to those individuals – white people – to whom the debt was owed. The purpose underlying Jefferson's foregoing policy was not to help Native peoples become sovereign yeoman farmers but, instead, was quite the opposite since it was intended to entangle Native peoples in issues of debt that could speed up the process of transferring Native lands to white entrepreneurs and speculators in a manner that – on the surface – might appear to be legal even though, in reality, Jefferson's policy violated Article IV, Section 4 of the Constitution due to the manner in which that policy not only failed to treat Native peoples with fairness, honor, or integrity, but was intended to preferentially serve moneyed interests who would be able to purchase Native land cheaply.

During the war of 1812 – which, on the surface, was just another conflict with the British to preserve American independence – the

United States sought to move into Florida, Canada, and Indian Territory in order to be able to expand trade, agriculture, and manufacturing. One of the so-called heroes of that conflict was Andrew Jackson who during the war of 1812 fought a number of battles against different Native peoples.

At a certain point during that conflict, Jackson proclaimed a policy – quite unilaterally and without constitutional authority -- in which anyone who took property from the Native group against whom he was fighting would be entitled to keep that property. Following the war, he maneuvered to have himself selected to become the treaty commissioner, and, then, proceeded to impose a treaty on the Creek people that confiscated half of their lands despite the fact that quite a few members of the Creek nation had fought along side of Jackson and, among other things, played a significant role in helping Jackson to win the battle of Horseshoe Bend in 1814.

The treaty that Jackson forged – quite arbitrarily and without constitutional authority -- stipulated that henceforward the land of the Creek nation could only be owned by individual members of that nation rather than belonging to the nation as a whole. The purpose of the foregoing provision of the treaty was intended to bring members of the Creek nation into competition with one another and, thereby, make the process of divesting them of their land that much easier.

Jackson began purchasing large tracts of the land that had been seized from the Creek nation. He also arranged for friends of his to do the same.

In the decade between 1814 and 1824, Jackson played a major role in arranging a number of treaties in which Native peoples were continually forced off their lands and required to move elsewhere. Jackson's succession of treaties was basically a two-step strategy aimed at stealing native land.

In step 1, Jackson encouraged settlers to infiltrate the lands of Native peoples. During step 2, he would threaten the indigenous people on those lands with extermination if they didn't turn over their lands to the white settlers who were encroaching on that territory.

Furthermore, without being constitutionally entitled to do so, Jackson used the treaties to set in motion an extensive patronage

program In other words, he took steps to ensure that many of his relatives and friends were appointed as surveyors, land agents, treaty commissioners, and so on who, as a result, became responsible for the administration of treaties that discriminated against indigenous peoples and favored white folks.

In 1814, Jackson continued his war against Native peoples by conducting various military excursions into Florida – which at the time belonged to Spain. The reason for his invasion of Florida was supposedly to stop if from being used as a refuge for runaway slaves, and, as well, to prevent warring Indians from using it as a base for launching attacks on Americans.

According to Jackson, Florida was vital to the interests of the United States. However, one has difficulty understanding how a handful of runaway slaves together with relatively small groups of supposedly hostile Indians constituted a threat to the United States … but, then, all too many military commanders throughout American history often have used hyperbole in an attempt to justify their questionable – and, often, unconstitutional actions.

After several wars with the Seminole people came to an end (the conflicts began in 1818), the United States was able to acquire both East and West Florida. Subsequently, Jackson became the military commissioner for the territory of Florida and, in that capacity, served as its first governor for a short period of time.

While occupying the foregoing post, he dispensed various insider tips to friends and relatives. One of those tips involved advice to an army surgeon-general that the individual should quickly purchase as many slaves as he could because the price of slaves was about to increase.

Jackson had the reputation of being a relatively benign slave owner. Nonetheless, he was an owner of slaves -- estimated to have consisted of as many as 300 individuals.

Consequently, although many people have described Jackson as a populist hero, nonetheless, he had no inclination to serve the interests of certain groups of ordinary people. Indeed, he fought to divest indigenous peoples and slaves of any opportunity through which they might develop some degree of real sovereignty.

While Jackson was conducting his forays into various segments of Indian territories, neither President Madison nor President Monroe did anything to prevent or interfere with Jackson's military campaigns. In addition, neither Madison nor Monroe took exception with – or took the time to find about -- Jackson's private accumulation of formerly Indian territories or his policy of patronage in conjunction with the treaties that Jackson was forcibly imposing on different Native peoples in order to strip the latter individuals of their lands.

President Monroe did manage to articulate the Monroe Doctrine in 1823. The doctrine was intended to discourage European countries from setting up colonialist governments in the New World.

However, Monroe apparently failed to understand that for almost all – if not all – of its existence, the United States had been behaving just like the Europeans against whom the Monroe Doctrine was directed. In other words, the United States was setting up colonialist governments throughout Indian Territory.

All of the previously described actions (or lack thereof) of Jefferson, Jackson, Madison, and Monroe were designed to deny sovereignty to indigenous peoples. Those actions – or lack thereof – were a continuation of the attitude that most white, American males – and many females -- had concerning anyone who was not like them – namely, only certain people were entitled to have the opportunity to become sovereign individuals.

When Jackson became President in 1928, he continued on with his policies of pushing indigenous peoples westward. In 1830, Jackson signed into law the Indian Removal Act in which Native people were granted the right to settle lands west of the Mississippi if they would cede the lands they occupied east of the Mississippi.

The Act was nothing but a forced form of migration that was being imposed on Native peoples. Although some Native peoples attempted to resist and fight against that forced migration, they had too few warriors and too few weapons.

Many Americans felt that the act of pushing Native peoples westward was just part of the process of helping civilization to expand its sphere of influence. However, one wonders how one can consider:

Cheating, stealing from, lying to, and murdering Native peoples to be valid expressions of civilization.

More importantly, none of the ways in which successive administrations of the United States government treated indigenous peoples can be reconciled with Article IV, Section 4 of the Constitution. Such "progress" was only possible by continuing to proceed in an unconstitutional manner.

During Jackson's presidency, states such as Mississippi, Alabama, and Georgia passed laws that stripped indigenous peoples of many of the conditions that were necessary for sovereignty. For example, tribes were no longer recognized as legal entities, and, consequently, they were not permitted to conduct meetings, and, in addition, elders in those tribes were not permitted to assume positions of leadership.

Indian territory was confiscated. White people were not only encouraged to settle in that territory but, as well, the land was re-distributed among them by means of state lotteries.

Although laws passed by Congress clearly stipulated that the federal government, rather than state governments, had authority over, and responsibility for, indigenous peoples, nonetheless, Jackson turned a blind eye to the foregoing sorts of discriminatory activities that were being perpetrated by the states in conjunction with Native peoples. As a result, Jackson's failure to act in the foregoing matters constituted a violation of Article IV, Section 4 of the Constitution because everything he did, or didn't do, in that regard was not rooted in a process that was impartial, objective, fair, honorable, done with integrity, or did not involve officials of the federal government serving as judges in their own cause.

Andrew Jackson was the individual who made the promise to Native peoples that they would be able to keep their lands for "as long as Grass grows or water runs". Yet, again and again, Jackson broke that promise to Native peoples.

Jackson maintained he was the friend of, and like a father to, Native peoples, but, nevertheless, he claimed to be powerless before the laws of the states and the federal government. He claimed that everyone must honor, and be subservient to, the law.

But, what was the basis of such a claim? Why should anyone be required to be subservient to laws that were arbitrary, unjust and lacked honor or integrity?

The rule of law in the United States only has value in the light of the guarantee of a republican form of government. One should be subservient to the rule of law only to the extent that those rules are fashioned through a process that is impartial, objective, fair, honorable, selfless, and has integrity.

Indeed, the real law before which Jackson – and the states -- should have been powerless was the Constitution. Supposedly, the Constitution was the supreme law of the land, and as such, Jackson had an obligation to act in accordance with its only guarantee – namely, to provide a republican form of government to the states and, thereby, protect those states and their inhabitants from invasion and domestic violence … but since white people were the ones who were invading Native peoples and perpetrating violence against the latter individuals, then, apparently, everyone, including Native peoples, should be obliged to become subservient to the law of self-serving greed rather than acknowledge, and take steps to counter, the constitutional lawlessness that had been permitted to run wild during the tenure of Jackson's administration.

While the previous chapter detailed many of the problems that permeated the legal decisions of the Marshall Supreme Court, there were exceptions to that general trend. For example, consider *Worcester v. Georgia*.

The Georgia state government had passed a bill into law that required all white individuals who entered into, and settled down on, any portion of Indian territories to give an oath of allegiance to the state government. The purpose of the law was to ensure that white people would not decide to "go native" and become friendly with, and positively disposed toward, the Native peoples near whom they were living.

However, there were a number of Christian missionaries who had entered into the lands of the Cherokee who began to empathize with, and speak on behalf of, the Native people they encountered in that territory. As a result, in early 1831, the Georgia state government

authorized the militia to intervene and take appropriate steps in conjunction with the aforementioned wayward missionaries.

The militia arrested three missionaries. One of the individuals arrested was Samuel Worcester.

Worcester was a postmaster and claimed that as an employee of the federal government he should be protected against being arrested by state militia. Worcester and his two colleagues were subsequently freed.

When word of the foregoing incident reached Jackson, he took swift action. He fired Worcester from his position as postmaster.

Later on, during the summer of 1831, the Georgia militia was sent into Cherokee territory once more. During this expedition, the militia arrested eleven people (10 missionaries and a newspaper publisher), and Worcester was one of the individuals who had been taken into custody.

During the journey from Indian territories to the county jail, members of the state militia abused and beat the prisoners. Once the prisoners arrived at the county jail, they were tried and convicted.

Nine of the eleven prisoners were released when they agreed to swear an oath of allegiance to the state of Georgia. However, the other two prisoners – one of whom was Worcester – refused to acknowledge laws that were tyrannical toward members of the Cherokee nation, and, as a result, they were sentenced to serve four years in prison.

The case was appealed to the Supreme Court. Marshall, speaking for the majority, maintained the federal treaty that, previously, had been signed between the United States and the Cherokee people had priority over Georgia state law (Marshall didn't necessarily care for Native peoples but he did wish to preserve the supremacy of federalism over state's rights). The Supreme Court ordered that Worcester and his companion be freed from custody.

The state of Georgia refused to comply with the Supreme Court decision. President Jackson also defied the Court order.

Once again, Jackson displayed contempt for the Constitution of the United States. Under Article IV, Section 4 he was constitutionally obligated to provide each of the states with a republican form of

government and, yet, he failed to do so in relation to, among other things, the case of *Worcester v. Georgia*.

The federal policy of Indian removal continued under Jackson's successor, Martin Van Buren. During the spring of 1838, the newly elected 8th President of the United States, authorized Major General Winfield Scott to proceed into the lands of the Cherokee and to employ whatever force was deemed to be necessary with respect to the removal of Native peoples from those lands.

Approximately seventeen thousand members of the Cherokee Nation were captured and subsequently imprisoned in conjunction with the foregoing operation. Six months later – in October of 1838 – those prisoners were forcibly marched and transported westward along what is often referred to as the 'Trail of Tears'.

Between imprisonment and the march westward, nearly a quarter of the Cherokee prisoners died. Yet, President Van Buren had the arrogant temerity to announce to Congress in December of 1838 that the whole matter has been resolved and "had the happiest effects."

For the most part, the Cherokee people were governed by the principle of non-violence. Andrew Jackson, Martin Van Buren, and a variety of state governments took advantage of that philosophical/spiritual perspective and proceeded to steal the property of the Native people, abuse their women, burn their homes, and destroy the system through which they educated their youth.

The Cherokee people – as did many other Native peoples -- pursued a way of life that encouraged the pursuit of sovereignty for all of its members. The United States government, along with considerable assistance from the state governments, ensured that the Cherokee people would not be able to continue such a pursuit, and in doing so, they betrayed the very Constitution that they were sworn to uphold and defend against all enemies, both foreign and domestic.

Unlike the character in the comic strip Pogo, government officials failed to realize that the enemy standing before them was not the Cherokee people but, instead, was the figures in the mirror that were staring back at them and that was made visible by the tain of history. Not only did the federal government repeatedly fail to honor every agreement it ever made with indigenous peoples such as the Cherokee,

but, as well, by being unwilling to conduct itself in a manner that gives expression to integrity, honor, objectivity, fairness, and impartiality in conjunction with, among other things, the way they interacted with Native peoples, the federal government has repeatedly failed to honor the guarantee that is stated in Article IV, Section 4 of the Constitution.

Ostensibly, the importation of slaves into the United States was scheduled to end in 1808. Unfortunately, the allure of easy money, unguarded coastlines, and continuing demand for slaves undermined whatever sort of good intentions might have been associated with the setting of the foregoing deadline.

Between 1808 and the Civil War, some historians have estimated that despite the aforementioned constitutional provision more than a quarter of a million slaves were imported into the United States. One should add thousands of Native peoples who were forced into slavery after 1808 in various parts of the United States to the foregoing number, and since, theoretically at least, Indian territories were external to the United States, then wherever one found white people with Native slaves, then technically speaking, the latter individuals had to have been imported into the United States.

Although the number of slaves being smuggled into the United States diminished to some extent after 1808, nonetheless, by 1860, there were roughly four million slaves present in America. The existence of those slaves, along with their Native counterparts, indicated there was a deep-rooted blight eating away at the fabric of American governance and society.

Slavery – whether involving Africans or Native peoples – did not exist in a vacuum. Slavery – of whatever description -- was possible because it was reinforced, regulated, and enforced by an extensive network of government officials, courts, law enforcement personnel, military forces, educators, and cultural attitudes.

The same system of laws and governance that oppressed African slaves had, simultaneously, also been oppressing Native peoples … even in relation to those individuals in the latter group who were not slaves. In fact, in many instances, it was the massive oppression of indigenous peoples by means of policies – such as Jackson's and Van

Buren's Indian Removal program -- which "freed up" land that, subsequently, could be planted, cultivated, and harvested by African, slave labor.

There was nothing free about a lot of the enterprise that helped lift America onto the world economic stage. That kind of enterprise was steeped in tyranny and oppression, as well as the exploitation of an array of resources (e.g., land and labor) that belonged to other people and, then, was stolen from them.

Some African slaves, like their Native counterparts, rebelled against their American oppressors. Aside from the previously mentioned slave rebellion of 1712 that occurred in New York City, there were also several major slave rebellions … one of those rebellions occurred in New Orleans in 1811 and was led by a free African-American, Denmark Vesey, and another rebellion – much smaller but more famous – took place in Southampton, Virginia and was led by Nat Turner.

While there were numerous armed rebellions by slaves that were relatively small in nature, many other slaves expressed their resistance to the tyranny of slavery by running away. Although not all of the foregoing slaves were successful in their escape attempts, nonetheless, by 1850, thousands of runaway slaves had been able to reach Mexico, Canada, and various regions of the northern United States.

As a result, on September 18, 1850, the Congress of the United States passed – and President Millard Fillmore signed into law – the Fugitive Slave Act. The Act was one of five bills passed by Congress that constituted a compromise, of sorts, between slave states and free states.

The foregoing compromise was enabled to move forward when President Zachary Taylor died and Fillmore became President. Although Taylor was a slave owner, he was opposed to the idea of permitting slavery to enter into southwestern United States, but Fillmore was not opposed to that policy.

As part of the aforementioned compromise between free states and slave states, Texas was required to relinquish its claims to New

Mexico as swell as to territory north of the Missouri Compromise Line. Moreover, California was to be admitted into the union as a free state.

In addition, Utah and New Mexico were permitted to make their own choices concerning the slavery issue under the principle of popular sovereignty (a principle that was denied to African slaves and Native peoples). Furthermore, the slave trade was banned from Washington, D.C (but slavery, per se, was not banned in that city).

In exchange for the foregoing concessions, representatives of the free states in Congress had to agree to abide by the Fugitive Slave Act. This act required all states – whether inclined toward freedom or slavery – to return escaped slaves to their owners, and any state official who failed to comply with that law was liable to be given a sizable fine – for the times – of $1,000 dollars.

The only state to declare the foregoing Act unconstitutional was Wisconsin. The Supreme Court of Wisconsin decided a case in 1855 involving a runaway slave (Joshua Glover) and a Wisconsin official (Sherman Booth) who interfered with the efforts of various people to capture Glover.

Four years later, in *Ableman v. Booth*, the U.S. Supreme Court heard arguments concerning the foregoing matter. Unfortunately, in 1859, the U.S. Supreme Court overturned the decision of the Wisconsin Supreme Court.

The scourge of slavery that the participants in the Philadelphia convention of 1787 had permitted to slither into the Constitution -- and, subsequently, was embraced by the states that voted to ratify that same scourge -- was alive and well more than 70 years later. In their eagerness to assume the federal reins of power, the architects of the Philadelphia Constitution and the ratification process had apparently forgotten the significance of the guarantee that was present in Article IV, Section 4 and, as a result, failed to act in a manner that reflected a republican form of governance.

In exchange for the sort of concessions for federal control that they sought, the Framers of the Constitution, and, then, the Federalist forces in the general population who helped to organize the ratification of that document, were willing to sell out what would amount – eventually -- to millions of human beings. More than 70

years later, members of Congress as well as members of the Supreme Court of the United States were prepared to follow the ignoble example of their predecessors and, once again, sell out human beings in exchange for certain kinds of concessions that served the interests of those officials.

The Framers of the Constitution ignored the very principles that were entailed by the idea of guaranteeing a republican form of government that had been fashioned by them. The people who ratified that Constitution also ignored – or were entirely ignorant of -- the significance of what was meant by a republican form of government, and, finally, both those who voted for the Fugitive Slave Act of 1850 – and this includes members of Congress as well as the President of the United States -- along with the Justices of the Supreme Court of the United States – all decided to act in contravention of Article IV, Section 4 of the Constitution and, in the process, dispense with principles of impartiality, objectivity, fairness, integrity, honor, selflessness, and not being a judge in ones own cause when making their decisions concerning the issue of slavery.

One can't help but take note of the irony that is present in the aforementioned term: "Principle of popular sovereignty," that was used in conjunction with the choice that citizens – at least some of them – in Utah and New Mexico were being given by the U.S. Congress with respect to whether, or not those citizens would admit slavery into their states. In other words, some individuals were being afforded an opportunity by Congress to be able to realize certain aspects of sovereignty so that other individuals – namely, slaves … whether runaway or not -- could be denied a similar opportunity to have some degree of sovereignty in their own lives.

Although there were white people in the United States who were opposed to slavery – i.e., abolitionists – slavery could not have endured in the United States for as long as it did and to the extent that it did if it were not supported by large segments of American society … from: Congress, the federal judiciary, and the President of the United States, to: State legislatures, governors, judges, "law" enforcement officials, and ordinary people.

Most slaves understood what all too many white people could not see because they (i.e., white people) were blinded by their desire to

serve what they perceived to be their own self-interests no matter what the collateral damage might be (to others or themselves). By enslaving other human beings, white people who supported slavery (directly or indirectly) also had managed unwittingly to enslave themselves

White slavers – and those who benefitted from its practice -- had become addicted to the financial, economic, social, and political benefits that accrued to them, or might accrue to them, through the system of slavery. They were constantly in search of the next fix, and that search was replete with inhuman savagery and indifference to the suffering of other human beings.

Frederick Douglas -- a newspaper publisher, writer, and a former slave -- once raised a question during an 1852-speech he gave in commemoration of Independence Day. He asked: What does Independence Day mean to the American slave?

In response to his question, Douglas indicated that slaves saw hypocrisy, deception and fraud in relation to the 4th of July whereas white Americans tended to be mesmerized by there own boasts concerning the liberty, equality, and sacred truths to which, supposedly, that Day gave expression. Virtually every slave understood that there was a virulent malignancy present at the very core of Independence Day … an evil that betrayed all the sermons, hymns, and prayers that white Americans offered up in remembrance of that occasion.

There are many names associated with the struggle against slavery. Denmark Vesey, Nat Turner, Harriet Tubman, John Brown, Frederick Douglas, and Harriet Beecher Stowe are just a few of those names.

One of more famous names to surface during that struggle was Dred Scott. However, although the name is famous, the individual to whom that name belonged is a rather mysterious figure.

In 1833, the executor for the estate of Peter Blow – who died in 1832 after moving to St. Louis Missouri from Alabama in 1830 – sold two slaves to Dr. John Emerson in order to pay for some outstanding debts. One of those two slaves was known as “Sam, while the name of the second individual was either unknown or not recorded.

One of the foregoing two slaves became known as Dred Scott. Whether that individual was the same person who previously had been referred to as "Sam," or whether the name "Dred Scott" was the name of the individual whose name at the time of the sale was not recorded or, perhaps, was a name given to that man at some point after the sale is not known.

In 1834, Dr. Emerson was hired as an army medical doctor and received a post at Fort Armstrong, Illinois. Dred Scott accompanied Dr. Emerson to that posting.

Fort Armstrong closed two years later, and Dr. Emerson was reassigned to Fort Snelling in the Wisconsin Territory. Again, Dred Scott traveled with Dr. Emerson to the new location.

Both Fort Armstrong and Fort Snelling were located in "free" territories. This meant that Dred Scott was not considered to be a slave in either of the foregoing regions.

At Fort Snelling, Dred Scott met a teenage girl -- Harriet Robinson -- who was being held as a slave by the Indian agent at the fort. Apparently, the Indian agent either sold the girl to Dr. Emerson or gave her to Dred Scott, but in either case, since Wisconsin Territory was located north of the Missouri Compromise that had been established in 1820, then, one wonders how the Indian agent could have: Owned a slave, sold a slave, or been entitled to give her away while living in what was supposedly "free" territory.

Subsequently, the teenage girl and Dred Scott were married. However, they continued to live with Dr. Emerson and his wife at the fort.

In 1840, Dr. Emerson was dispatched to Florida where the Seminole War was taking place. However, Dred Scott and his family accompanied Mrs. Emerson back to St. Louis, Missouri.

Dr. Emerson exited the army in 1842. Although for a short time he returned to St. Louis in an attempt to start a medical practice, he subsequently moved to Davenport, Iowa in 1843 and died a short time later.

The Scotts stayed behind in St. Louis, Missouri. However, whether they continued to stay with Mrs. Emerson or were living on their own is unknown.

In 1846, Dred Scott and his wife filed several suits in Missouri state court. Who or what induced the Scotts to file those suits and who paid for the lawyers that carried those suits forward remains a mystery.

During the course of the foregoing lawsuits, the issue of ownership arose. The only individual to step forward in this regard was John Sanford, the brother of Dr. Emerson's widow.

The validity of Sanford's claim to ownership was questionable. There was no tangible evidence – other than his claim -- that such a transfer had taken place or had been formally sanctioned in any fashion.

Previously, the Missouri Supreme Court had ruled on a number of occasions that whenever slaves were taken into "free" states, then, that act of migration automatically freed those slaves. Furthermore, the aforementioned court rulings also stipulated that once freed in the foregoing manner then moving back into regions that permitted slavery did not cause a freed individual to become a slave again.

In his suit, Dred Scott referred to himself as a free person. So, whether the suit was filed for purposes of legally establishing his freedom or done for other reasons is uncertain.

Scott's suit was filed against the widow of Dr. Emerson, and in that complaint, he claimed that she had physically abused him and also had falsely imprisoned him. He was asking for $10 in damages.

If Dred Scott were considered to be a slave, then, the foregoing sort of physical abuse and imprisonment would have been considered to be quite legal. However, if Dred Scott were a free person, then – assuming his complaint was upheld -- as a free person, he would be entitled to damages.

There is some question about whether, or not, Dr. Emerson's widow actually did the things that were being claimed against her in the Scott suit. According to various accounts, she was not a cruel or abusive individual, and, in addition, there was some indication that she might not even have had contact with Dred Scott on the day that the alleged assault and imprisonment took place.

The complaint against the former Mrs. Emerson might have been fabricated in order to provide a pretext for filing a suit. Nonetheless, if

the charges against Mrs. Emerson were false, then, one wonders what purpose would be served by making allegations against someone who could arrange to hire legal representation with respect to those complaints.

However, if the suit was upheld, then, the awarding of damages would constitute legal proof that Scott was, indeed, a free man. Such a strategy might have been the ultimate reason for filing suit in the first place.

The lawyer acting on behalf of the Scotts wanted to use the time that the couple had spent in Illinois and the Wisconsin Territory with Dr. Emerson and his wife as a means of demonstrating that the Scotts had become free individuals. Yet, apparently, their lawyer felt that before he could introduce such evidence, he would have to demonstrate to the jury that Mrs. Emerson had, at some point, claimed ownership.

Why their lawyer – who used to serve as the attorney general for Missouri – believed the foregoing scenario was necessary is uncertain. One might suppose that irrespective of whether the Scotts' lawyer could demonstrate that Mrs. Emerson ever had ownership of the Scotts, nevertheless, being able to show that the Scotts had spent time in Illinois and the Wisconsin Territory should have been sufficient in the eyes of the Missouri courts to establish their status as free individuals, and, therefore, one wonders why the Scotts should have to go through a trial to legally establish their freedom when, according to the Missouri Supreme Court, their residency in two free regions automatically already established their status as free individuals.

The Scotts lost the first trial. However the jurors understood the facts – or lack thereof -- of the foregoing case, they ruled in favor of Mrs. Emerson.

Following the foregoing verdict, the Scotts' lawyer filed a motion for a new trial. Subsequently – although this took some time -- a state judge granted that motion and ordered a second trial.

In the meantime, Mrs. Emerson had hired a prominent lawyer of her own by the name of George Goode who was from Virginia. Good was a zealous supporter of slavery, and, consequently, he challenged the ruling of the state judge concerning a second trial.

The Emerson challenge reached the Missouri Supreme Court in the spring of 1848. The state Supreme Court ruled against Mrs. Emerson and upheld the Scott's motion for a new trial.

The second trial did not convene until early January 1850. When the trial concluded, the jury accepted evidence indicating that Mrs. Emerson previously had ownership of the Scotts and, as well, that the migration of the Scotts to Illinois and Wisconsin Territory with Dr. and Mrs. Emerson had effectively freed the Scotts from their former condition of slavery.

In March of 1850, Mrs. Emerson -- along with her brother, John Sanford -- appealed the verdict of the jury in the second trial. However, that appeal was not heard by the state Supreme Court until two years later.

By the time the foregoing case was heard, the composition of the state Supreme Court had changed somewhat. One of the new appointee's – William Scott -- was an advocate for slavery, and during deliberations, he induced the other justices to reverse the decision in the second Dred Scott trial that had taken place in 1850.

The 1852 Missouri Supreme Court ruled that the 1851 U.S. Supreme Court opinion in *Strader v. Graham* case held priority over previous decisions of the Missouri Supreme Court. The rulings for both the *Strader v. Graham* case as well as the 1852 Missouri Supreme Court decision concerning that case are instructive.

The basic facts of the *Strader v. Graham* are as follows. Two Kentucky musicians – who were slaves – used to travel to Ohio on a regular basis in order to stage minstrel shows. On one of those occasions, the two musicians did not return to Kentucky but, instead, escaped to Canada.

A person from Kentucky – who claimed ownership of the two performers – filed suit in Kentucky state court against several citizens from Ohio and sought to collect damages in conjunction with the alleged roles of the latter individual with respect to helping his former "property" to escape. Since Ohio was a free state and Kentucky was a slave state, not unsurprisingly, the Kentucky judges ruled on behalf of the plaintiff claiming that Kentucky law had precedence over Ohio law.

Why free Ohio would be – or should be -- willing to submit to the decision of a Kentucky court in conjunction with an issue pertaining to slavery is anybody's guess. Consequently, in many, if not all, respects, the decision of the Kentucky judges was something of a moot point as far as the people in Ohio were concerned.

The Fugitive Slave Act of 1850 indicated that people in one state who were found to be guilty of thwarting efforts to return runaway slaves to the purported owners of the latter individuals in another state could be fined $1,000. Yet, there were no provisions in that Act which specifically addressed the issue of awarding damages to aggrieved "owners".

The U.S Supreme Court seemed to confirm the foregoing consideration because when the justices heard the *Strader v. Graham* case, the Taney Court dismissed the suit claiming that the Court had no jurisdiction in the matter. Nonetheless, despite declaring that the United States Supreme Court did not have any jurisdiction in the foregoing case, Chief Justice Roger Taney proceeded to weigh in on the dispute.

Taney's commentary revolved about a contrafactual conditional. He argued that if the two musicians had returned to Kentucky, then Kentucky law, and not Ohio law, would have determined their 'free versus slave' status.

Taney's actions were self-contradictory. One can't claim that the Supreme Court has no jurisdiction in a case, and, then, simultaneously proceed to advance a ruling on that same matter.

If the Supreme Court had no jurisdiction in the *Strader v. Graham* case, then, whatever Taney had to say about the foregoing matter that concerned anything other than the issue of jurisdiction should have been considered to be irrelevant and immaterial to that suit. Moreover, since Kentucky had no legal jurisdiction in Ohio with respect to the issue of slavery, what would lead Taney to believe that people in free Ohio would be willing to submit to a decision of a Kentucky court that displayed bias in favor of slavery?

Roger Taney was pro slavery. He comments on the *Strader v. Graham* that had nothing to do with the ruling of the Court (i.e., that it lacked jurisdiction in the case) was an attempt to use the Court for

purposes of advancing his own pro-slavery cause. As such, it constituted a gross violation of Article IV, Section 4 of the Constitution.

The Philadelphia Constitution did not put forth any argument that justified the practice of slavery. Instead, slavery was part of a process of backroom deal-making intended to keep the constitutional process going that: (1) Set limits on how slaves could be counted in the process of apportionment; and, (2) (according to Article IV, Section 2) indicated that when someone – without the issue of slavery being addressed specifically -- was held to service or labor in one state and, then, escaped to another state, then regardless of the laws of the second state, the escaped individual did not, thereby, become divested from such service and labor and, consequently, should be returned to the party to whom such service or labor is considered to be owed.

There is no aspect of the Constitution that can be considered independently of, and escape being filtered through, the guarantee of Article IV, Section 4. Thus, the conditions for holding an individual to service or labor in a given state must be evaluated in terms of the principles that are inherent in a republican form of government.

No man-made form of governance that is impartial, objective, fair, honorable, and has integrity (which means, among other things, that people cannot serve as judges in their own cause) is capable of justifying the practice of slavery. Whatever meanings are to be ascribed to the third paragraph of Article IV, Section 2, those meanings do not constitute a justification for slavery.

Consequently, Taney's comments in the *Strader v. Graham* case were not only unwarranted but they were entirely arbitrary. There is no principle of law that he could cite with respect to the issue of slavery that is capable of demonstrating how Kentucky law should be given priority over Ohio law, or why slavery should be given precedence over freedom.

Taney was "arguing" by way of declaration or assertion. In other words, he wasn't constitutionally or legally demonstrating that Kentucky law had precedence over Ohio law in the *Strader v. Graham* suit. Instead, he merely proclaimed that such was the case.

Although Taney's remarks were not part of the Supreme Court's ruling in the foregoing case – the Court had stated that it had to

jurisdiction in the matter – his remarks, nonetheless, accompanied the decision that was handed down, and, therefore, created the false impression that his extracurricular comments were part of that ruling. William Scott of the Missouri Supreme Court -- who, like Taney, was also pro-slavery -- latched onto Taney's foregoing comments and treated those remarks as if they provided a viable constitutional basis for overturning the second Dred Scott decision when, in reality, Taney's remarks were entirely peripheral to the actual ruling of the U.S. Supreme Court in *Strader v. Graham*.

Justice Scott disliked the Missouri Compromise of 1820 because it banned slavery in the northern territories and, therefore, stood in opposition to his pro-slavery biases. He induced other members of the Missouri Supreme Court to treat the United States Supreme Court ruling in *Strader v. Graham* as if it constituted a precedent that, in effect, overturned the Missouri Compromise even though the *Strader v. Graham* ruling was devoid of any such significance because, as noted previously, the United States Supreme Court's ruling concerning the foregoing case held that the Court had no jurisdiction in the matter.

Both Justice Scott and Justice Taney were each playing games with the Constitution. Moreover, in doing so, each of them was violating Article IV, Section 4 of the Constitution.

Why cite a United States Supreme Court declaration indicating that the Court lacked jurisdiction in *Strader v. Graham* and, then, add injury to insult by giving that decision priority over previous decisions of the Missouri Supreme Court that clearly established the principle of "once free, always free"? Equally perplexing, is why did the other members of the Missouri Supreme Court become bamboozled by Justice Scott's tortured logic concerning the U.S. Supreme Court's decision in *Strader v. Graham* and, as a result, adopt a pro-slavery position?

According to Judge Scott, times had changed, and the Missouri Supreme Court's reversal of the Dred Scott trial verdict was an expression of that change. Furthermore, as far as Judge Scott was concerned, that kind of change was necessary in order to prevent "… the overthrow and destruction of our government."

For Judge Scott, slavery was in accordance with the Divine Providence of God that, thereby, enabled the African race to become

civilized. None of his claims were capable of being substantiated, and all of his claims were inconsistent with the requirements of Article IV, Section 4.

The Missouri Supreme Court's 1852 reversal of the verdict in the second Dred Scott trial did not end the matter. The case went through various permutations -- one of which involved moving the case from state court to federal court -- and along the way, various new lawyers became associated with those legal proceedings.

In May of 1854, federal judge Robert Wells ruled that he found the Supreme Court's decision in *Strader v. Graham* to be compelling and, consequently, ordered the jury to return a verdict in favor of John Sanford who, as noted earlier, was the brother of Dr. Emerson's widow and who had, for years, been claiming that Dred Scott was his property. The fact that Judge Wells felt bound by a Supreme Court ruling that declared itself to have no jurisdiction in the *Strader v. Graham* suit suggests that the legal reasoning employed by Judge Wells had more to do with a pro-slavery bias than being Constitutionally relevant.

Furthermore, given the foregoing decision, one also might question why Judge Wells permitted the Scott trial to proceed. The Constitution specifies that in order to be tried at the federal level, then a suit must involve citizens of different states, but if Judge Wells considered Dred Scott to have been a slave of John Sanford, then what does that say about whether, or not, Dred Scott was a citizen of the state of Missouri, and if he were not deemed to be a citizen, then, presumably, that case should not have been heard in federal court.

The case of *Dred Scott v. Sandford* (Sanford's name had been misspelled by a clerk and the error was never corrected) was placed on the desk of the clerk for the U.S. Supreme Court on December 30, 1854. More than a year passed before oral arguments were scheduled for February 1856 … some ten years after Dred Scott and his wife first filed their complaints against Mrs. Emerson.

Before taking a look at the Supreme Court's decision in the Dred Scott case, one should consider the perspectives of the nine members of the Court who would be hearing arguments in the Dred Scott case. One should also reflect on the nature of the politics involving Presidents and members of the Senate that determined who was likely

to get selected as a candidate for the Supreme Court and which of those candidates was likely to get confirmed.

Andrew Jackson, who was a slave owner, nominated four of the nine members of the Supreme Court that heard arguments for the Dred Scott case. Those individuals were: Roger Taney of Maryland; James Wayne of Georgia; John Caron of Tennessee, and John McLean of Ohio.

Roger Taney, who succeeded John Marshall as Chief Justice, grew up in a family that owned slaves. Although Taney freed the slaves that he inherited from his family, nonetheless, he advocated pro-slavery sentiments, and, among other things, Taney believed that the federal government did not have the constitutional right to prevent slavery from spreading into different territories of an expanding country.

James Wayne, like Taney, came from a family that had practiced slavery. Moreover, like Taney, Wayne harbored pro-slavery sentiments.

John Caron also held pro-slavery sentiments. Yet, during the Civil War he remained loyal to the Union.

Peter Daniel was from Virginia. He was a slaveholder who was nominated in 1842 by President Van Buren.

In 1845, President Tyler nominated Samuel Nelson of New York for the Court. Although a 'Northerner', Nelson was a proponent of states' rights and, like Taney, did not believe the federal government had the authority or right to prevent slavery from spreading into western territories.

President Polk nominated Robert Grier from Pennsylvania as a candidate for the Supreme Court. In 1846 Grier was confirmed by the Senate and began his duties as a Justice.

Grier also was a strong proponent of states' rights. Prior to the Dred Scott case, he had upheld an Illinois law concerning fugitive slaves by arguing that states had the right to exclude individuals who were likely to become a threat to, or a burden for, the state, but Grier did not provide an explanation as to why one should suppose that fugitive slaves were likely to become a threat to, or burden for, society.

After Zachary Taylor died in office, Millard Fillmore became President in 1851. He nominated Benjamin Curtis from Massachusetts

to become the next member of the Supreme Court. Curtis had been a staunch proponent for the Fugitive Slave Act of 1850.

Finally, in 1853, Franklin Pierce – at the behest of every justice on the Supreme Court – nominated John Campbell of Alabama, and the Senate approved that selection. Eight years later, Campbell resigned from the Supreme Court in order to serve as assistant secretary of war for the Confederacy.

The period of 34 years, or so, during which all of the foregoing nine justices were nominated and confirmed was a time in which the southern portions of the Whig and Democrat parties tended to dominate what took place in Congress. Such domination meant that oftentimes, the litmus test for whether, or not, someone might be nominated for the Supreme Court and, then, subsequently, become confirmed by the Senate depended on those candidates possessing pro-slavery and/or states' rights credentials.

The politics that were in play with respect to Presidents, Supreme Court candidates, and members of the Senate during the foregoing 34-year period were permeated with themes that revolved about the issue of slavery. All of the foregoing political maneuvering on the part of various presidents and members of the Senate was in violation of Article IV, Section 4 because those political machinations were largely devoid of: Impartiality, objectivity, fairness, integrity, selflessness, and honor … the qualities that determined whether or not the federal government was providing a republican form of government to each of the states and their citizens.

Given the philosophical and political composition of the members of the Supreme Court in 1856, Dred Scott could not, and would not, receive a fair hearing in relation to his case. Moreover, the legal counsel for Dred Scott added to its problems by pursuing a problematic strategy.

Dred Scott's lawyer, Montgomery Blair, tied his strategy to the idea that Dred Scott's emancipation from slavery had occurred during Scott's residence in Illinois. The difficulty with that strategy is the federal court in Missouri had concurred with the decision of the Missouri Supreme Court that Missouri law had precedence over Illinois law in the case, yet Blair was making references to a dissenting

opinion in the Missouri Supreme Court ruling as to why Illinois law ought to have priority over Missouri law.

Dred Scott also had lived in the Wisconsin Territory that, like Illinois, also conferred freedom on slaves who resided there. Why Blair failed to raise the issue of Scott's residency in Wisconsin Territory during the Supreme Court's proceedings is not known.

In rebuttal, the lawyers for John Sanford – Reverdy Johnson of Maryland and Henry Geyer from Missouri – argued that the Supreme Court should uphold John Sanford's 'plea in abatement' that had been previously advanced in federal court. Essentially, Sanford had requested that the federal court should rule that it lacked jurisdiction in the Scott case because Scott was not a citizen of Missouri but, instead, was a slave and since the Constitution stipulated that only citizens of states could bring a suit in federal court, Scott should not be permitted to file his case in federal court.

During the foregoing court proceedings, Scott's legal representative also filed a response to the aforementioned 'plea in abatement'. That filing claimed – and the federal court accepted the claim – that Scott's residence in Missouri had provided him with sufficient standing to bring suit in federal court.

Now, however, Sanford's lawyers were arguing before the Supreme Court that the federal court's ruling in Scott's favor had been in error and should be reversed. Scott's lawyer, on the other hand, maintained that Sanford's lawyers had renounced their right to a 'plea in abatement' during the federal court proceedings.

According to Montgomery Blair, Sanford's lawyers effectively withdrew the 'plea in abatement' issue when they proceeded on with the case after the federal court had rejected their plea. Consequently, according to Blair, Sanford's lawyers should not be permitted to re-introduce that plea to the Supreme Court.

After oral arguments had been completed, the Justices met to discuss the Scott case on at least five different occasions over a period of three months. Finally, on May 12, 1856 -- with the 1856 presidential election close at hand -- the Justices decided to call for further arguments on the case to be heard the following December … after the election was over.

On December 15th, 1856, a second round of oral arguments was conducted in the Supreme Court. Montgomery Blair reiterated his earlier argument that Sanford had waived his 'plea in abatement' by continuing on with the case after the federal court had rejected that plea. Blair also argued that because Scott's time in Illinois had emancipated the latter individual, then, this meant that Scott was a citizen of Missouri as well and, consequently, had a constitutional right to file his case in federal court.

The lawyers for Sanford – Johnson and Geyer – devoted most of their oral argument to criticizing the Missouri Compromise. They were using the Dred Scott case to advance the idea that the federal government did not have the authority to prevent slavery from being practiced anywhere in the United States.

The constitutional basis for the foregoing sort of argument, however, is questionable. Article IV, Section 4 requires that the federal government should engage everything it does in a way that is compliant with the principles inherent in the aforementioned section of the Constitution. Consequently, how can any federal official simultaneously claim that, on the one hand, he or she is being impartial, objective, fair, honorable, selfless, as well as exhibiting integrity, while, on the other hand, is busy acquiescing to the proposal that people have the right to practice slavery whenever and wherever they like?

How does one show that slavery encompasses principles of objectivity, impartiality, fairness, selflessness, honorableness, and integrity or that one is not being a judge in one's own cause by advocating slavery? Slavery is inconsistent with a republican form of government, and because the Framers of the Constitution failed to appreciate the presence of that inconsistency in their process of constitutional deal-making in Philadelphia, the sins of the Fathers have been visited upon their sons and daughters ever since.

During the re-argument phase of the Dred Scott case, lawyers from both sides discussed the "needful rules and regulations" clause of Article IV, Section 3 in the Constitution. Sanford's lawyers argued that while the federal government did have certain limited rights concerning oversight of a territory prior to the time such a territory became a state, nonetheless, prohibiting slavery was not encompassed

by the "needful rules and regulations" that were to be used in such governance. George Curtis, on the other hand, who had been brought in by Montgomery Blair to address just that issue on behalf of Dred Scott, argued that determining what constituted "needful rules and regulations" with respect to the governance of a territory was a political question that should be settled by Congress and not the Court.

To varying degrees, both sides missed the issue entailed by Article IV, Section 3. Contrary to the Scott side of the argument, "Needful rules and regulations" is not primarily a political issue, but a moral one because whatever is considered to be politically needful in the way of rules and regulations must be capable of being reconciled with the requirements of the very next section of the Constitution – namely, Article IV, Section 4 – and, as well, such "needful rules and regulations" should be capable of being able to enhance or advance the principles of: Justice, tranquility, defense, general welfare, and freedom that are inherent in the Preamble, and, this, once again, gives expression (at least initially) to moral issues rather than political ones since the latter sorts of issues can be settled only after the moral issues have been addressed and resolved. On the other hand, contrary to the Sanford side of the argument, one is likely to encounter insurmountable constitutional difficulties if one tries to claim that prohibiting slavery does not constitute part of what "needful rules and regulations" encompass because such a claim runs counter to the requirements of Article IV, Section 4 of the Constitution.

Once the oral re-arguments came to a conclusion, the Supreme Court justices began its deliberations. These continued for more than three months and involved various sorts of shifts among the Justices.

Initially, five of the Justices wanted to rule that the Missouri Compromise was unconstitutional. How they would have been able to successfully do so in light of Article IV, Section 4 seems, at best, problematic.

Two of the Justices – namely, Curtis and McLean – were prepared to write dissenting opinions in relation to the foregoing majority opinion. The remaining two justices – Grier and Nelson – wanted to avoid the Missouri Compromise issue altogether and, instead, hoped the Court would produce a ruling that merely upheld the decision of a

lower court to reverse an earlier jury finding that found in favor of Dred Scott.

Grier and Nelson were afraid that if the five justices who wanted to rule that the Missouri Compromise was unconstitutional were to release that majority decision, then the public would be likely to consider that opinion as being motivated by something other than constitutional considerations. Grier and Nelson were right to entertain the foregoing sorts of worries because much of what was taking place during those deliberations was being fueled by political agendas and not constitutional considerations.

At one point during the foregoing discussion, the toned-down, narrow perspective of Grier and Nelson seemed as if it might prevail. However, negotiations fell apart, and, at that point, Taney decided to throw caution to the wind and issue a full-throttled attack on the Missouri Compromise.

Apparently, Taney was not convinced that his arguments, on their own merits, would be able to persuade people about the constitutional correctness of his position, and, as a result, Taney decided he needed to induce one of the other justices who was not perceived to be pro-slavery to join in with the majority position. Taney considered Justice Robert Grier to be the person who might best accommodate the plan that was being set in motion.

Grier and President Buchanan were from the same state (Pennsylvania) and party (Democrat). Justice Carron wrote several letters to President Buchanan urging the President to prevail on Grier to join in with the majority vote, and, and finally, Grier gave into the pressure and sided with the Taney majority.

The letters that Justice Carron wrote to President Buchanan concerning Justice Grier constituted violations of Article IV, Section 4. The pressure that President Buchanan put on Justice Grier to join with the majority decision also constituted a violation of Article IV, Section 4. And, finally, Justice Grier's act of acquiescing to such pressure rather than giving his own independent decision also constituted a violation of Article IV, Section 4 … none of the foregoing individuals was exhibiting qualities of: Impartiality, objectivity, fairness, and integrity in the Dred Scott case.

The Court ruled – seven to two – that Dred Scott was a slave and not a free man. However, certain facets of the commentary accompanying the foregoing decision – especially as expressed by Taney – sought to go far beyond the foregoing conclusion.

Early in the history of the Supreme Court, each of the members of the Court would provide written commentary on the case before them. That practice had been discontinued, but, during the Dred Scott deliberations, that practice was resurrected, and, as a result, nine justices had something, or other, to say about the matter before them.

The multiplicity of opinions that were voiced by members of the Supreme Court in relation to the Dred Scott case created a certain amount of subsequent confusion among those observers of the Supreme Court who were trying to discern what judicial principles might follow from, or be entailed by, that case. However, just as not everything that glitters can necessarily be considered to be gold, so too, not everything that issues from the pens of Supreme Court justices necessarily has constitutional value … in fact, I believe a very good argument can be made (some of which has been stated in the last two chapters of this book) that very little of what comes forth from Supreme Court Justices has constitutional value because many of their rulings (along with the underlying conceptual dynamics that generate those rulings) either violate Article IV, Section 4 of the Constitution or fail to serve the principles inherent in the Preamble in a manner that complies with the requirements of Article IV, Section 4.

According to Taney, the Supreme Court had the requisite authority to not only review but, as well, to reverse the decision of a lower federal court with respect to the "plea in abatement' issue. Taney reversed the decision of Judge Wells that Dred Scott had sufficient standing to be permitted to file his suit in federal court.

However, what was the basis for the Taney reversal? What evidence indicated that Dred Scott was not a citizen of the United States?

John Sanford claimed that Dred Scott was his slave. Yet, Sanford could not produce anything that corroborated such a claim.

Dred Scott had spent time in both Illinois and the Wisconsin Territory. Therefore, according to the laws of those regions, Dred Scott was a free man.

Previously, the Missouri Supreme Court had ruled in favor of the policy that "once free, always free." The fact that, subsequently, a pro-slavery justice was appointed to the Missouri Supreme Court and somehow induced other members of that Court to give priority to the ruling of the Supreme Court of the United States in *Strader v. Graham* which indicated that the latter Court lacked jurisdiction in the foregoing case does not seem to constitute a viable basis for overturning the principle of "once free, always free," and, therefore, one wonders why the latest ruling of the Missouri Supreme Court should be given priority over its former decision.

Is the law merely a matter of whatever the last Supreme Court Justice standing says it is – whether on a state or federal level? Or, do justices have to provide arguments that actually are capable of tying conclusions to first principles in demonstrably valid ways?

What first principles of justice entitled Taney to ignore the laws of Illinois, the Wisconsin Territory, and the "once free, always free" policy of the Missouri Supreme Court? What first principles of jurisprudence entitled Taney to give priority – despite a lack of evidence -- to John Sanford's claim that Dred Scott was a slave rather than accepting Dred Scott's statement in his original complaint that he was a free man?

Originally, African people, who had been free, were captured, made slaves, and, then, imported into the United States. How does one go about proving – beyond a reasonable doubt -- that some people have a right to be free, while others do not? How does one demonstrate that the process of taking free people and turning them into commodities that can be brought and sold is capable of being reconciled with either: Article IV, Section 4, or the Preamble to the Constitution?

Taney claimed that John Sanford had not waived his "plea in abatement" issue when he proceeded with the federal trial after the judge in that trial had denied that plea. However, even if this assertion were true, it fails to address the question about the nature of the basis on which Taney was claiming that Dred Scott did not have the right to file suit in federal court.

During the process of giving expression to his opinion, Taney tried to argue that it was incumbent on those seeking to establish the right of black people to be considered as citizens to be able to show that the Framers had meant to include black people as citizens. Taney seemed to ignore – or missed entirely – the other possibility that, perhaps, Taney was the one who had to show that the Framers intended to exclude black people from citizenship.

There was nothing in the Constitution indicating that blacks could not be citizens. Indeed, in 1787, all thirteen states had free blacks living amongst their populations, yet the Constitution made no statements indicating that the freedom enjoyed by those individuals should be revoked.

Taney claimed that the opinion of most leaders in Europe at the time the Constitution was being framed held that blacks were inferior beings. Consequently, by implication, he assumed that the Framers of the Constitution also shared those views.

However, while their might have been some participants of the 1787 Philadelphia Convention who did not consider blacks to be either human or persons, there is no evidence that such a view was held by the majority of those delegates. Furthermore, even if a majority of the Philadelphia delegates did harbor such opinions, none of those individuals could reconcile those kinds of opinions with the requirements of Article IV, Section 4 Constitution or the principles inherent in the Preamble.

Moreover, factually speaking, Taney was wrong. Sir William Blackstone – a prominent 18th century judge, jurist, and politician (and, therefore, a European leader) – had stated more than 20 years prior to the gathering in 1787 Philadelphia that blacks became free as soon as they set foot in England. Neither Taney nor anyone else had an effective response as to why what Blackstone claimed with respect to England should not be the case everywhere.

In addition, even if everything that Taney argued in the foregoing way were true, why should people of later generations feel obligated to support the racist policies of the Framers? The possibility that some of the Framers -- maybe, even many of them – might have been racists does not justify subsequent generations pursuing those same policies, nor do such beliefs obligate later generations to adopt such ideas.

There are only two dimensions of the Constitution that form a justifiable basis for subsequent generations to feel obligated to adhere to that document. Those two dimensions concern the principles inherent in Article IV, Section 4 of the Constitution together with the principles that are being alluded to in the Preamble … provided, of course, that the latter principles are pursued in accordance with the moral requirements of a republican form of governance.

If governance is not conducted through principles of impartiality, objectivity, fairness, honor, integrity, selflessness, and so on, then everything done in the name of the Constitution is arbitrary and, consequently, cannot serve as the basis for establishing a justifiable source of obligation to which citizens will be drawn. Moreover, if governance is not dedicated to principles of: Justice, tranquility, common defense, welfare, and liberty that are pursued in accordance with the requirement of a republican form of government, then, government begins at no justifiable beginning and works toward no justifiable end.

Although Roger Taney had no evidence to support his claim, he maintained in his brief for *Scott v. Sandford* that the individuals who signed the Declaration of Independence intended to exclude blacks from among those who were considered to be individuals that had been endowed by their Creator with certain inalienable Rights and who, presumably therefore, were also entitled to citizenship Indeed, running contrary to the spirit of Taney's foregoing arguments, one discovers that both prior to the Philadelphia Constitutional Convention, as well as after the Constitution had been ratified, there were a number of states that permitted free blacks to enjoy an array of political rights.

Taney didn't just want to keep Dred Scott in a condition of slavery. He wanted to keep America entangled within the twisted and untenable logic of a pro-slavery mentality, and, unfortunately, he was quite willing to violate Article IV, Section 4 of the Constitution in order to be able to try to accomplish his aims.

The Chief Justice was not being an independent arbiter of truth in the Dred Scott case. Contrary to the requirements that are entailed by the guarantee of providing a republican form of government to each state, Taney was serving as a judge in his own pro-slavery cause.

The Blow family that originally brought Dred Scott to Missouri as a slave and sold him to Dr. Emerson more than a quarter of a century previously, had supported Dred Scott throughout his long, winding, legal ordeal. Three months after the Supreme Court issued its decision in March 1857 that Dred Scott was still a slave, Taylor Blow -- the son of Peter Blow who had died in 1832 -- made arrangements to purchase Dred Scott, and, then, set him free.

Dred Scott died in 1858. Legally, he had been free for fifteen months, but, in reality, he had always been a free man who had the misfortune to be held captive by an immoral system of legalese for almost his entire life.

Indigenous peoples and imported Africans – along with their descendents – were not the only groups that became entangled in an arbitrary legal system in America. Unfortunately, more often than not, the phrase: "rule of law" is code for a system of governance that – despite giving lip service to ideas such as: Freedom, justice, fairness, rights, and so on -- seeks to control people rather than empower them.

The foregoing system of control was omnipresent in Colonial America. Eventually, it morphed into the form of the Philadelphia Constitution when – once ratified -- all three branches of government proceeded to ignore its only escape clause – namely, Article IV, Section 4 – since as long as the qualities of a republican form of government (i.e., impartiality, independence, objectivity, fairness, integrity, honor, and selflessness) did not constrain and shape what transpired in government, then the U.S. Constitution becomes nothing more than an arbitrary system in which different factions seek to control one another.

The way in which the rule of law came into existence is fairly simple. From a very early period in American history, there were certain individuals and families that came to the New World who had access to resources, finances, and/or power that, subsequently, were leveraged in order to acquire wealth, land, and political influence in the Colonies.

For example, during the 1600s, the Dutch West India Company had established the New Netherland colony in what is now New York.

The colony was organized around the idea of a patroon system in which various individuals controlled large tracts of land at the behest of the Dutch government and its corporate arm: The Dutch West India Company.

In time, the person operating one patroon would intermarry with a member of the family that controlled another patroon. Soon, there was an interlocking patroon system that controlled pretty much everything that took place in the colony.

The system that was in place was entirely arbitrary. At various junctures, some King, Queen, government representative, and/or a company would decide that he, she or it wanted something and, therefore, would proceed to claim it, but, other than the claim (and some form of army/navy to enforce that claim) there was nothing to justify the process of acquisition.

In 1645, the Dutch West India Company selected Peter Stuyvesant to become the Director-General for the New Netherland colony. At a certain point, some of the people within the colony became disgruntled with the process of governance that was being administered by Stuyvesant and sought reforms.

Stuyvesant responded to those complaints by indicating that his authority was derived from God and the Dutch West India Company. Stuyvesant was arguing by assertion, because there was nothing – other than his claim – which demonstrated that God actually had granted Stuyvesant such authority or that the Dutch West India Company (and its government sponsor) was entitled to take control of the land that came to be referred to as New Netherland.

Moreover, proof that Stuyvesant's got his marching orders from the Dutch West India Company came in the form of a religious controversy that Stuyvesant had initiated. More specifically, Stuyvesant was a member of the Dutch Reformed Church, and, as a result, he not only prevented Lutherans from establishing a church in the colony, but, as well, he also issued a proclamation that Lutherans were not permitted to even conduct worship services in their own homes.

Someone complained to the Dutch West India Company about the foregoing situation. Since three members of that company were

Lutheran, Stuyvesant was told to withdraw his earlier proclamation and permit Lutherans to conduct private religious services.

The Netherlands was not alone in the arbitrary manner in which it engaged the New World. England, France, and Spain were also pursuing similar arbitrary systems of laying claim to land and resources in the New World.

Sometimes those arbitrary systems rubbed up against one another. For example, at one juncture, Stuyvesant became embroiled in a boundary dispute with the governor of the English colony known as New Haven.

Eventually, the Treaty of Hartford was signed and the boundary dispute resolved. However, the dispute arose in the first place because two countries arbitrarily had decided to lay claim to certain regions of the New World with nothing to offer as justification for proceeding as they did except an ambitious arrogance and self-serving mentality.

The Treaty of Hartford was not a document that demonstrated how the Netherlands and England were justified in making the claims they did. Instead, it was a negotiated agreement that permitted both countries to continue on – notwithstanding certain modifications -- with the arbitrary systems that each nation had put in place initially.

Thousands of people who had settled in New Netherland became subjects of the aforementioned patroon system just as the people who settled in the English Colony of New Haven became caught up in the system of control (sometimes referred to as governance) that had arisen in the latter area.

In 1839, a group of tenants in the Hudson River Valley – many of whom were farmers – organized a protest against a family estate (that was a descendent of an earlier patroon system) that allegedly owned but, in reality, merely controlled – by means of an arbitrary rule of law -- the land on which the tenants were living. The rule of law was arbitrary because both the tenants and estate owners were settled on land to which neither of them – based on first principles of justice -- was entitled, but the prevailing rule of law indicated that, somehow, the individual who claimed to own the estate was entitled to charge tenants rent, and, as well, the rule of law indicated that the tenants had

to pay taxes in order to underwrite the costs of services for people (e.g., sheriffs) who had been authorized by that same rule of law (which, first, came into existence much earlier in colonial history through the efforts of self-serving individuals) to collect money (or the equivalent in livestock) from those tenants who owed back rent.

The foregoing situation was far removed in time from the Charter of the Forests that had been agreed to in 1217 A.D. England. However, the concerns of those who were rebelling against the rents they had to pay to individuals who controlled the land on which they lived and worked resonated with the commoners who existed more than six hundred years earlier.

The Charter of the Forests was intended to right some of the wrongs that had arisen as a result of the policies employed by William the Conqueror and his successors who, over time, increasingly prevented common people from having ready access to lands and resources the latter individuals needed in order to be able to survive. People seem to go through cycles of forgetting and, then, remembering that everyone – including indigenous peoples and others who have been enslaved -- has a right to access the lands and resources of the world, and the Anti-rent movement that was taking place in the Hudson river Valley during 1839 gave expression to a resurfacing of the philosophical, political and legal considerations that led to the Charter of the Forests being established six hundred years earlier.

One might also note that many of the individuals who had joined the Anti-Rent movement felt that they were trying to continue on with, if not complete, a revolution that they believed had been discontinued prematurely by the so-called Founding Fathers. For all of the hyperbole that often surrounded the Philadelphia Convention of 1787 along with the ensuing ratification processes, many people felt that commoners had been excluded from the power structure that had been set in motion through the Constitution and its ratification.

For example, many people had not been permitted to participate In the process of framing the Constitution nor been allowed to take part in the ensuing ratification conventions. There were social, economic, philosophical, and political constraints that were firmly in place in relation to who got to be a part of the foregoing processes.

Who were the individuals who were invited to the Philadelphia Convention in 1787? They were not drawn from a random cross-section of the population but were individuals of means who represented a variety of vested interests.

They did not travel to Philadelphia to help the American people to become sovereign. They traveled to Philadelphia to ensure that the kind of constitutional rule of law that became established would serve their interests and the interests of their constituents.

The Anti-Rent movement wanted to assist common people to achieve economic and political sovereignty. However, they were opposed by an array of forces that were more interested in serving the skewed rule of law that had been established through the Philadelphia Constitution than they were in helping everyone to become sovereign individuals.

In 1845, nearly 25,000 tenants signed a petition seeking assistance from the legislature with respect to the dispute between renters and landlords. The petition was defeated … but it was not defeated by a rule of law to which everyone subscribed, but, rather, that petition had been defeated by an arbitrary rule of law that had been imposed on people and whose seeds were planted by a group of self-serving elites who were seeking to protect their interests.

When the petition failed, the aforementioned conflict continued. This included the sheriff or his deputies continuing to seize livestock from various tenants to cover whatever might be owed in back rent. In response, the writs that the Sheriff and his deputies were trying to serve often were grabbed by the rebels and burned. Moreover, sometimes the representatives of law enforcement were tarred and feathered while, on a few occasions, they were killed.

Eventually, the governor ordered some 300 troops to be dispatched to the source of the conflict. Rebels were captured, charged (sometimes with 'treason'), tried, and sentenced.

Without wishing to condone the violence of the rebel tenants, those individuals were fighting against a system that was perpetrating economic and political violence against them. Those who controlled the land were able to call upon an arbitrary form of the rule of law in which sheriffs, the governor, the military, and the legislature were in

the service of a political and economic arrangement that had been set up to protect property that had been acquired through morally questionable means, whereas those who did not have free access to the lands and its resources sought a form of law that served the interests of everyone.

The prevailing rule of law did not establish justice, or ensure domestic tranquility, or provide for the common defense, or promote the general welfare, or secure the blessings of liberty for members of the Anti-Rent movement. The rule of law that was in place required the meanings of: Justice, domestic tranquility, the common defense, the general welfare, and liberty to be defined in terms that served the existing power structure … for example, at no time did the governor send in 300 troops to protect the Anti-Rent people from the tyranny of the landowners.

Later on during 1845, anti-rental forces managed to help elect 14 people to the state legislature. As a result, a state constitutional convention was convened during the same year and was able to prevent new feudal-like leases from being issued.

However, a proposal to break up the monopoly-control of huge estates was defeated. So, although some progress was made, the rule of law still was tilted in favor of the elites who controlled vast swaths of land and resources.

With the support of Anti-Rent backing, a new governor was elected in 1846. The new administration promised – and kept its word – to pardon those members of the Anti-rent movement who had been imprisoned.

During the 1850s many of the worst excesses of the landlord driven system in New York were modified or eliminated through a variety of court decisions. Nonetheless, landlords remained landlords who, for the most part, were still backed by a biased rule of law, whereas tenants remained tenants, and in many respects although there were some improvements in their conditions, they were not necessarily equally served or protected by that rule of law.

Oftentimes, when a power structure is challenged and, to a degree, cornered by its citizens (as happened during the Anti-Rent movement), that structure will make concessions of one kind or

another to defuse a crisis (and changes involving the relationship of tenants and landlords did occur). Nonetheless, amidst all those changes, the power structure maneuvers to hold on to the underlying authority that permits it to continue to control much of what takes place in society.

Around the time that the Anti-Rent movement was taking place in New York, another insurgency of a similar – yet slightly different -- kind also was present in Rhode Island. The latter insurgency was known as Dorr's Rebellion.

One aspect of the rule of law that was given expression in the charter that governed Rhode Island indicated that the only individuals who were entitled to vote were those who owned land. Such a rule of law certainly was not fashioned by people who were landless, and, therefore, the rule of law that was present in the Rhode Island charter was intended to serve the interests of only certain individuals … individuals who, like the landowners of the aforementioned patroon system in New Netherland, had, for quite some time, been rigging the political and legal system to serve their interests.

There had been an economic crisis that started around 1837. Many people were leaving farms that could not be sustained, and, in addition, for a variety of reasons, there was a rising tide of unemployed people.

The foregoing individuals did not own land or did not own land of sufficient value. Consequently, according to the rule of law that prevailed in Rhode Island (which was based on a royal charter issued in 1663 that should have been dissolved following ratification of the Constitution), they were not entitled to vote.

Disenfranchising people helps to dispossess them of sovereignty. Some of the individuals who owned land in Rhode Island wanted to ensure that their interests were served, and what better way to accomplish this than to prevent those who owned no land (or owned land of insufficient value) from having any sort of political influence that might be able to impinge, in some problematic fashion, on issues involving ownership of property?

However, before moving on with the story of the Dorr Rebellion, one important point should be noted. The insurgency that took place

in Rhode Island during 1841-1843 focused only on the fact that white males were being disenfranchised, and, therefore, no consideration was given to the thousands of women (white or otherwise) who also were disenfranchised.

In any event, there were more than 12 thousand white males in tiny Rhode Island that were landless and, therefore, could not vote. Thomas Dorr, a lawyer from a privileged background, became one of the leaders for the disenfranchised in Rhode Island.

In 1841, after years of protests and discussions, the suffrage movement in Rhode Island organized a constitutional convention. A new constitution was forged, and, as one might anticipate, one of the principles advanced in that document was that white males did not need to own property in order to be able to vote.

During the following year, the people of Rhode Island were invited to vote on the new constitution. 14,000 of the people who participated in that process voted in favor of the new constitution.

Over one-third of those who voted in favor of the new constitution owned property. This meant that even when considered from the perspective of the existing rule of law in Rhode Island – which only entitled white males with property to vote – a majority of the landowners in Rhode Island had endorsed the new constitution.

A few months after the foregoing vote took place an election was sponsored by the suffrage movement. Dorr was elected as governor, and, as well, a new group of legislators was also elected.

The state now had two governors and two constitutions. Both governors were issuing proclamations of one kind or another and were each seeking to gain the allegiance of the people of Rhode Island.

At some point during the foregoing set of events, the existing governor of the state, Samuel King, contacted President John Tyler and received assurances from the President that, if necessary, federal troops would be sent to Rhode Island to quell any armed uprising. Thomas Dorr also went to Washington to seek the support of the President for the newly elected governor's cause but came away empty-handed.

In the interim, governor King declared martial law. He arrested many followers of Dorr and announced a reward for the capture of Dorr.

Dorr, plus several hundred of his followers, decided to attack an arsenal located in Providence. The attack went badly, and Dorr left the state.

A month, or so, later, Dorr returned to Rhode Island and organized a group of armed supporters. Governor King countered the foregoing move by sending out a much larger contingent of state militia to oppose the troops that had been assembled by Dorr.

When Dorr realized he was outmanned, his troops withdrew. Dorr, once again, fled the state.

Following some changes in governance in Rhode Island (which included some changes to the charter), Dorr returned to Rhode Island in October 1843 feeling that, perhaps, the political atmosphere might have mellowed somewhat. He was promptly arrested, charged with treason, and tried by the Rhode Island Supreme Court.

He was convicted, and the next year he began a life sentence. However, after approximately a year had passed, the Rhode Island legislature – under pressure from the public – passed an Act of General Amnesty that released Dorr from prison.

In 1854, the Rhode Island legislature also passed a bill vacating the original verdict of the Rhode Island Supreme Court concerning the Dorr trial. However, a state court ruled that the bill was unconstitutional.

A great deal of turmoil and difficulty might have been avoided in the Dorr affair if John Tyler had been more presidential when he was approached by Governor King who was seeking support from the federal government in order to thwart the Dorr Rebellion. More specifically, when Governor King called on President Tyler for his assistance, no armed insurrection had occurred, and, in fact, the People's Party only had taken peaceful steps – radical as those steps might be (i.e., drafting a new constitution and holding elections) -- to address the disenfranchisement problem.

President Tyler was bound by the requirements of Article IV, Section 4 of the United States Constitution. In other words, he was

obligated to provide each state of the Union with a republican form of government, and there was nothing very republican about permitting a state – e.g., Rhode Island -- to disenfranchise thousands of its people.

How is the federal government exhibiting impartiality, independence, objectivity, fairness, selflessness, honorableness, and integrity when it is willing to militarily support a state that seeks to deny people the right to vote who own no land or who own property of insufficient value? President Tyler should have informed Governor King that the President would be willing to support Governor King with federal troops should armed insurrection occur in Rhode Island but only if Governor King first took steps to bring the sort of changes to the state charter that would enable people without property – or with property of insufficient value – to be able to vote.

If President Tyler had taken the time to explain the nature of Article IV, Section 4 to Governor King and sought the latter's co-operation to resolve the disenfranchisement issue in Rhode Island rather than escalate the conflict by offering to send federal troops to Rhode Island should armed insurrection break out, then, Tyler would have had something to offer to Dorr when the latter individual sought an audience with the President. President Tyler could have indicated to Dorr that steps were going to be taken by Governor King to fix the disenfranchisement issue, but those steps would cease if there were any form of armed insurrection by Dorr or his supporters.

Unfortunately, all sides of the Dorr Affair simply doubled-down and dug in their heels. President Tyler ignored his duty with respect to the requirements of Article IV, Section 4 of the Constitution, while, at the same time, Governor King was determined to continue to disenfranchise people despite evidence that thousands of property owners supported the idea that people without property should have the right to vote, and, finally, Thomas Dorr, along with his followers, lost patience in the face of Governor King's truculence and, as a result, decided that armed insurrection was the only way to achieve their purposes … and from there, things fell apart.

In 1849, a case arose out of the Dorr Rebellion and reached the Supreme Court of the United States. At a certain point during the set of events encompassed by the Dorr Rebellion, Luther Borden, who

worked for the state of Rhode Island, entered the house of Martin Luther.

Borden proceeded to arrest Luther. Moreover, according to Luther, Borden damaged property while searching Luther's house.

Luther filed a suit against Borden. The suit involved a complaint of trespass, and significantly, in the suit, Luther indicated that Borden was acting on behalf of a party (namely, the government of Governor King) that did not constitute a republican form of government.

The Taney Court believed that the question before it was whether, or not, the Supreme Court had the authority to declare which of the two governments in Rhode Island constituted legitimate legal authority. On that issue, Daniel Webster -- who was appearing before the Supreme Court on behalf of Borden – argued that if the people were entitled to claim a constitutional right to overthrow an existing administration, then orderly governance would cease to exist and, instead, anarchy would reign supreme.

Webster's stance in his defense of Borden cannot be reconciled with the Declaration of Independence. The latter document states: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness – That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed – That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or 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."

The government of Rhode Island was treating its citizens unequally, and was doing so in accordance with a charter that had been issued nearly two hundred years earlier by a King … a King from whom the American people had since freed themselves. Consequently, the aforementioned royal charter did not constitute a valid basis for governing a state that had ratified the American Constitution nearly 60 years earlier.

The self-evident inalienable rights that had been endowed to – among others – the people of Rhode Island did not depend on owning property. Furthermore, the right of Rhode Island citizens to Life, Liberty, and the pursuit of Happiness was being interfered with by a form of governance to which the landless people of Rhode Island had not consented (i.e., if they couldn't vote, then they couldn't consent), and, therefore, the system of government run by Governor King had become destructive of the ends (namely, Life, Liberty, and the pursuit of Happiness) for which governments are constituted.

According to the Declaration of Independence, the people of Rhode Island had a right to abolish the existing destructive form of governance and abolish it as well as replace it with a new government that was based on principles and a form of organizing its powers that seemed to be most likely to bring about the safety and happiness of the people. As a result, the People's Party of Rhode Island convened a constitutional convention and drafted a new constitution that was based on the sort of foundational principles and organization of powers that would serve the interests of a greater number of people than heretofore had been the case (although women, indigenous people, and slaves were still being left out of the picture).

If the Declaration of Independence is considered to have been appropriate with respect to American complaints against England more than 80 years earlier, why weren't the words of that document also appropriate in conjunction with the complaints of thousands of people concerning the form of governance in Rhode Island that was actively disenfranchising people without the consent of the latter individuals? I am sure that King George had sentiments that resonated with the perspective being espoused by Daniel Webster before the Supreme Court in *Luther v. Borden*.

After all, if the American colonists felt they had a fundamental right to overthrow the colonial governments established by Britain, then, surely, King George – like Webster -- must have thought that law and order would disappear and anarchy would fill the vacuum. Yet, anarchy did not emerge … instead, a new form of governance arose that was based on principles and ways of organizing its powers that the Framers felt might offer them the best chance for safety and

happiness, and the People's Party in Rhode Island was struggling toward that same end.

The Taney Court claimed that determining whether, or not, a state government had been lawfully established was not within the purview of the Supreme Court. However, the members of the Taney Court missed the point of Luther's remarks when he complained that the Rhode Island government did not constitute a "republican form of government" … simply stated, the argument is as follows: Government had failed to act with: Impartiality, integrity, independence, objectivity, and fairness while disenfranchising people, and during the course of failing in the foregoing manner, the members of state government had been serving as judges in their own cause – namely, the cause of property owners over against those who did not own property.

According to the Taney Court, it was up to the President and Congress to act upon the guarantee clause that appears in Article IV, Section 4. The Court considered those issues to be of a political rather than a legal nature and, therefore, claimed that it had no jurisdiction in the matter before the Court.

By arguing in the way it did, the Supreme Court exhibited cowardice in the line of constitutional fire. The Taney Court was not being required to make a determination about which government in Rhode Island constituted the legitimate government of that state, but, rather, the Taney Court was being asked to pass judgment on whether, or not, the administration of Governor King and associated legislators were acting in compliance with Constitutional requirements to provide a republican form of government to its citizens.

In order for the federal government to act in compliance with the requirements of Article IV, Section 4, that government must engage the matters before it through qualities of: Impartiality, independence, objectivity, fairness, selflessness, and integrity. Moreover, if, while engaging matters in the foregoing manner, the Federal government determines that states are treating its own citizens in a way that does not reflect a republican form of government, then, the Federal government cannot possibly realize the guarantee of Article IV, Section 4 – and, thereby, provide a republican form of government to each state -- unless the Federal government is willing to intervene and point out to such a state that the form of governance being employed by the

state is violating Article IV, Section 4 of the Constitution and, as a result, is not providing a republican form of governance to its citizens.

Contrary to the previously noted claims of the Taney Court, the obligation of the Federal government to ensure that it offers each state a republican form of governance does not belong to just the President and the members of Congress. That duty belongs to the members of the Supreme Court as well, and, in fact, as has been argued elsewhere in this book, the primary responsibility of the Supreme Court is not to interpret the meaning of the Constitution but, instead, its primary responsibility is to adjudicate whether different branches of government (both on the federal and state level) are operating in compliance with the requirements of the epistemological and moral principles that are inherent in Article Iv, Section 4.

At the very least, the Supreme Court should have directed the King government in Rhode Island to fix the disenfranchisement problem that was embedded in its state charter. In addition to the foregoing possibility, the Supreme Court could have directed the people of Rhode Island to hold further elections in order to, first, choose between the two state constitutions that were available to them, and, then, in a second phase of that election, select which governor and legislature should be in charge with respect to Rhode Island.

By failing to advance either of the foregoing possibilities (or possibilities similar in nature), the Taney Court violated Article IV, Section 4 because it did not provide a republican form of government to the state of Rhode Island. Failure to perform one's duties or ignoring those duties is not the same thing as being impartial, independent, objective, and fair.

Finally, the failure of the Taney Court in the foregoing case has served as a very problematic – if not destructive -- precedent. More specifically, the decision of the Taney Court in *Luther v. Borden* has influenced succeeding Supreme Court Jurists to also shirk their duty in relation to properly applying Article IV, Section 4 to the cases that come before them.

Daniel Webster, who represented Borden (a representative for the King government of Rhode Island during the Dorr Rebellion) in the *Luther v. Borden* case, was a kindred spirit of Alexander Hamilton, the first Secretary of Treasury in the administration of George

Washington. Webster believed – as Hamilton did – that the object of government was to protect property domestically as well as to command respect and achieve glory in the world beyond America's borders.

However, one does not find any of the foregoing purposes specified in the Preamble to the Constitution. Moreover, if the principles of Article IV, Section 4 were properly brought to bear on the activities of government, one could not simultaneously employ qualities of: Impartiality, objectivity, fairness, independence, integrity, and honor, when making government decisions, while, on the other hand, simultaneously harbor a predilection for the protection of property.

John Marshall also believed that the primary responsibility of government was to protect property. However, Marshall – along with Hamilton and Webster -- could not put forth viable arguments that were rooted in foundational principles of justice that were capable of demonstrating why protection of property was, or should be, the primary object of government … the only motivation they had for proceeding in the manner they did is because giving priority to property over people served their interests.

Unfortunately, Marshall's bias – i.e., extending priority to the protection of property over other possibilities -- influenced many of his decisions on the Supreme Court. A variety of other Supreme Court Justices, as well as federal and state court judges – along with many legislatures -- also operated from the same sort of perspective as Marshall did when it came to the issue of advancing the causes of property rather than resolving the needs of people.

For example, after failing to persuade the Federal government to back his project, Dewitt Clinton petitioned the New York State legislature to help finance a canal that he wanted to build between the Hudson River and the Great Lakes. The foregoing project (known both as Clinton's Ditch and the Erie Canal) covered 350 miles that connected unsettled regions of Illinois, Indiana, and Ohio with New York, and took eight years to build (1817-1825).

The Erie Canal cost $7 million dollars to finish and provided a return of around $121 million dollars. In addition, the building of the canal also led to the emergence of a variety of small businesses that

supplied products and services involved in either the construction or running of the canal.

The people who did the hard, physical work needed to complete the foregoing project were paid – relatively speaking -- very little. Moreover, those who were hired to help the aforementioned spin-off businesses operate were also paid – relatively speaking – very little.

However, many neighborhoods in New York City where working-class families lived did not have access to: Clean water, sewers, or garbage collection. As a result, there was a cholera epidemic in 1832, an outbreak of typhoid in 1837, and typhus erupted in 1842.

Apparently, the state of New York had money to invest in the Erie Canal. Yet, the state did not seem to have money to invest with respect to the infrastructure of the neighborhoods where working people of New York City lived.

The Erie Canal not only helped to start the 'Age of Canals' in America, but, as well, the Erie Canal was part of the growth in corporations that took place in the United States. Several thousand corporations were chartered between 1790 and 1860.

Quite frequently, corporations were the beneficiaries of government largesse (on both a federal and state level). For instance, millions of acres of land were given away, free of charge, by the federal government, to railroad corporations. Furthermore, millions of dollars in loans were granted to many of those same companies by an array of state governments.

Public resources were being used to advance the interests of private property (such as corporations). Yet, at the same time, many of those same public resources were being withheld from advancing the interests of the general populace.

Did the support of projects such as the Erie Canal and the building of railroads bring a certain amount of economic progress to the nation? Yes, it did, but the reaping of the rewards that ensued from those projects was usually skewed in favor of – relatively speaking -- the few rather than being for the benefit of the many.

Considerable thought was given to how private property would be enhanced through the assistance of government. Unfortunately, very

little thought was directed toward what impact the government's enhancement of private property might have on the rest of society.

On numerous occasions, federal and state governments – along with the court systems of both federal and state governments – encouraged the formation of monopolies through merger in order to help those companies eliminate various kinds of competition that adversely affected the profitability of those enterprises. However, the problematic impact that the foregoing sorts of monopolistic practices might have on the public or workers was merely considered – if it was considered at all – to be an unavoidable form of collateral damage that occurred when the interests of private property were served.

One dimension of the foregoing collateral damage involved the increasing control that corporations were beginning to have over many facets of society. Indeed, many corporations not only came to dominate certain aspects of economic life (for both consumer and worker) but, as well, corporations were acquiring a considerable amount of influence with respect to the manner in which governments conducted themselves.

While corporations were on the rise, trade unions were also beginning to form. However, many courts often viewed those organizations very differently than they viewed corporations.

Corporations were often encouraged to: Form, merge, eliminate competition, and set prices, yet, trade unions were often considered to be actively engaged in restraint of trade because they interfered with the ability of companies to be able to dictate prices, wages and working conditions. Many governments and courts were favorably disposed toward corporations and unfavorably disposed toward trade unions because – like Hamilton, Marshall, Webster, and others before them -- they harbored biases concerning the priority of private property over the interests of people … biases that were in violation of Article IV, Section 4 of the Constitution.

Early on his career as a Supreme Court Justice, John Marshall seemed to understand that corporations were a creation of government that were dependent on government for their properties and powers. For example, in Marshall's 1804 decision dealing with the *Head & Amory v. Providence Insurance Company*, he stated that a corporation "… is a mere creature of the act to which it owes its

existence; its powers are only those which the legislature granted to it."

Fifteen years later – in the 1819 *Trustees of Dartmouth College v. Woodward* case – when Marshall was fully ensconced in his ability to mold the Constitution in his own image, he felt quite comfortable with conferring perpetual succession on corporate leadership and claiming that they were immortal beings – artificial persons – that, in certain respects, transcended state governments. Marshall hadn't become more perceptive with the passing of years, but, instead, he had merely become more deeply entangled within his own biases in relation to a variety of issues concerning private property.

As indicated during the last chapter, Marshall could not put together a cogent, viable argument to support his position that corporations were immortal persons. Rather, like a king, he merely issued an edict on the matter and moved on.

Nearly, two decades later, the Supreme Court – sans Marshall – moved closer to his 1804 decision concerning corporations than to his 1819 opinion on the matter. *Charles River Bridge v. Warren Bridge* was decided in 1837, but the case had reached the Supreme Court quite a few years earlier.

In 1785, the Massachusetts state legislature awarded a monopoly charter to the Charles River Bridge Company to construct a toll bridge between Charlestown and Boston. The bridge served a variety of purposes, but one of its primary advantages was being able to offer the fastest route between Harvard College in Cambridge and the financial/legal center of Boston.

The charter for the bridge was scheduled to last 70 years, ending in 1855. After the charter expired, the state would assume control of the bridge.

In 1828, the makeup of the Massachusetts legislature changed. What had been a Federalist dominated government body was taken over by Democrats who were inspired by so-called populist policies of Andrew Jackson.

The new legislature granted a charter to the Warren Bridge Company for the construction of a second toll bridge. The proposed project would be built a hundred yards from the Charles River Bridge.

The terms of the second charter stipulated that the arrangement would expire as soon as the construction costs of the bridge had been recovered or within a period of six years. When either of the foregoing conditions occurred, the bridge would come under the control of the state.

The Charles River Bridge Company had generated a lot of profits during its roughly 40 years of operations. The new project threatened those profits and, as a result, the Charles River Bridge Company decided to seek an injunction to prevent the new toll project from going forward.

The Massachusetts state court ruled in favor of the upstart Warren Bridge Company. The state judges argued that the state legislature had the authority to change the conditions of an existing charter (the one granted to the Charles River Bridge Company in 1785).

The Charles River Bridge Company appealed the decision of the Massachusetts court to the Supreme Court. They hired Daniel Webster to represent them.

Webster had appeared before the Supreme Court on behalf of the Trustees of Dartmouth in 1819. He had won that case and seemed positioned to win the *Charles River Bridge v. Warren Bridge* case because John Marshall was still presiding over the Court, and, presumably, would rule that states did not have the authority to impair contracts involving corporations.

However, Marshall was having difficulty fashioning a majority decision in conjunction with the *Charles River Bridge v. Warren Bridge* case that arrived at the Supreme Court in 1831. The reasons for Marshall's difficulties were because two of the seven Justices were absent from the Court, while two other Justices were prepared to offer opinions that ran contrary to Marshall's position on the case.

Marshall shelved the case and planned to have the matter reargued again several years later. Yet, when that case resurfaced in 1833, Marshall still could not forge a majority decision.

When the issue bubbled to the surface for a third time in 1837, Marshall was no longer a Supreme Court Justice. Roger Taney was the new Chief Justice.

Daniel Webster was still representing the Charles River Bridge Company before the Supreme Court. He believed that if the Warren Bridge Charter were permitted to have a second charter, then, this effectively would undermine property security and diminish, if not abolish, the rights to which he believed property was entitled.

The 1828 Massachusetts state legislature was under the impression that the state government had granted a charter to, not entered into a contract with, the Charles River Bridge Company. Just as John Marshall had argued in 1804 (but in contrast to the position put forth by Marshall in 1819), the Massachusetts state legislature also felt that corporations were created by, and subject to the control of, the state, and, therefore, charters could be changed to serve the interests of the state.

Taney's position was compatible with the perspective of the Massachusetts legislature. He maintained that "the happiness and prosperity of the community" should have priority over considerations of property.

The Taney majority opinion in the *Charles River Bridge v. Warren Bridge* case forms one end of a spectrum of Court decisions concerning corporations, while the other end of that spectrum is anchored by John Marshall's 1819 majority opinion in the *Trustees of Dartmouth College v. Woodward* case. The Taney end of the foregoing spectrum maintains that corporations are nothing more than creations of the state that are intended to serve the public (Marshall agreed with this perspective in 1804) and, as such, are subject to change by state government, while at the other end of that spectrum, corporations are persons of an immortal nature that serve the interests of property and that are not necessarily subject to the dictates of state governments.

Both the Charles River toll bridge project and the Warren Bridge proposal were the result of charters that had been granted to individuals who found favor with different editions of the Massachusetts state legislature. Although the public might derive benefit from each of the chartered enterprises, nonetheless, the driving force behind those charters was largely political in nature and, to a considerable extent, independent of what benefits might trickle down to the public.

For instance, no preliminary studies were run in conjunction with either of the foregoing projects to determine what the precise benefits of a toll bridge to the public might be. Moreover, there are a variety of questions that could have been asked concerning the extent of the benefits that supposedly would accrue to the public when two toll bridges are situated so close together (e.g., Would more benefit be derived by the public if the bridges were much further apart and connected to different parts of Cambridge and Boston?).

Competition might bring savings, of a sort, to certain sectors of the public. Nevertheless, private companies – and their shareholders – are likely to be the big winners in the foregoing sorts of projects.

Consequently, the issue before the Supreme Court in 1837 did not necessarily consist of a choice between, on the one hand, a Taney-like approach to corporations/charters and, on the other hand, a Marshall-like stance concerning corporations/charters. The real issue might have been whether, or not, the Massachusetts state legislatures in 1785 and 1828 were conducting their affairs in accordance with a republican form of government.

Although the 1785 charter was issued several years before the Philadelphia Constitution had been drafted, ratified, and come into law, nonetheless, one still could raise questions about the constitutionality of that charter once the new Constitution became the supreme law of the land. Neither the 1785 charter nor the 1828 charter was necessarily granted on the basis of: Impartiality, objectivity, independence, fairness, and integrity, and, therefore, there could have been dimensions of the charter-granting process in each case that might have violated Article IV, Section 4 of the Constitution and, thereby, failed to provide the citizens of Massachusetts with the sort of republican form of government that had been guaranteed to each state of the Union and their citizens.

While I believe that the Taney-approach to corporations/charters is capable of being demonstrated to be far more consistent with the Preamble to the Constitution in a way, and to a degree, that the Marshall-approach to corporations/charters (i.e., the Dartmouth decision of 1819) cannot accomplish, nevertheless, the ability of state legislatures to change the conditions under which corporations/charters operate should, itself, be subject to critical

review. If the motivations underlying a state legislature's desire to change the conditions of a corporation or charter is not done in accordance with the principles inherent in a republican form of government – and the 1828 Warren Bridge charter that was issued by the Massachusetts state legislature seemed to be largely political in nature, just as the 1785 Charles River Bridge charter had been -- then, the Supreme Court should be able to step in and point out those sorts of considerations.

The happiness and prosperity of a community does not depend just on states having authority over the conditions under which corporations/charters operate. The happiness and prosperity of the community also depends on whether, or not, the foregoing sort of authority is wielded in accordance with qualities of: impartiality, objectivity, fairness, honor, selflessness, and integrity.

Corporations – like the Charles River Bridge Company -- continued to chafe beneath the yoke of government control. They employed various tactics in order to try to escape the constraints being imposed on them by government, and one of those tactics was the 14th Amendment.

In 1868, the 14th Amendment had been ratified into law by three-quarters of the states. Section 1 of that amendment stipulates: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privilege of immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Railroad companies in particular began to fight back against the constraints being imposed on them by filing a variety of suits against different levels of government. In many of those suits, lawyers for the railroad companies claimed that according to the law, corporations are considered to be artificial persons and, consequently, under the provisions of the 14th Amendment (which speaks in terms of "any person"), corporations should be entitled to the same protections of the law as other persons are.

However, corporate artificial persons do not meet the conditions set forth in Section 1 of the 14th Amendment. For instance, unlike human beings, the artificial persons to which corporations give expression are neither born nor naturalized in the United States.

In other words, even though being granted a charter to operate, as well as the process of human birth, each entails a starting point, the two events are very dissimilar in nature. Being born is a natural, biological event, whereas being granted a charter is an artificial, government-based event.

Furthermore, human beings who were born in another country can acquire citizenship in America through the process of naturalization. However, corporations are not eligible to become naturalized citizens because they did not, first, experience biological birth in another country.

Human beings can be born, naturalized, and become citizens. Corporations, on the other hand, are incapable of being born, naturalized, or becoming citizens because they are artificial – that is, fictional – entities that have been created by the law to address certain legal issues, just as fictional characters in a work of literature are created by an author to address certain literary issues.

One could no more argue that a corporation is a real person entitled to the protections of the 14th Amendment than one could claim that Jane Eyre – or any other literary, fictional character -- is a real person who is entitled to such protections. Fictional creations (whether legal or literary) are not equivalent to human, biological creations.

Another literary creation of corporations reportedly arose during an 1882 case between San Mateo County, California and Southern Pacific Railroad. In this suit, a paid witness – Roscoe Conklin, who was a railroad lawyer – testified that when Conklin had been part of the Senate Committee that was drafting the 14th Amendment, he purposely substituted the word “person” rather than “natural person” into the latter portion of Section 1 of the proposed amendment so that at some later point in time corporations would be able to claim that artificial persons were entitled to the same protections under the 14th Amendment that were going to be extended to natural persons.

John Bingham – another railroad lawyer -- also gave testimony similar to that of Roscoe Conklin. Bingham, however, had been involved with the House of Representatives rather than the Senate when the 14th Amendment was being drafted but, as a member of the House, he also sought to ensure that the language of Section 1 in the 14th Amendment would comply with the interests of corporations concerning the issue of personhood.

In addition, indications were given that one of the Congressional committees working on the 14th Amendment supposedly kept a secret journal. The contents of this journal allegedly indicated that the members of the Committee wanted to be able to protect corporations under the amendment and, therefore, intended for the word "person" that appeared in the latter portion of Section 1 of the 14th Amendment to include corporations.

Whether, or not, Roscoe Conklin and John Bingham ever did what they claimed to have done during the drafting of the 14th Amendment – namely, substitute the word "person" for the term "natural person in order to provide protections for corporations under the provisions of that amendment – there is no evidence that their alleged surreptitious manipulations involving the wording of Section 1 in the 14th Amendment gave expression to the sentiments of the other members of the Congressional Committee of which they were apart, or that the states who, subsequently, would ratify the Amendment all clearly understood that the word "person" in the proposed amendment was intended to refer to 'corporate persons' as well as 'natural persons'. Furthermore, if Conklin and Bingham – along with, possibly, other members of the Congressional Committees that were involved in drafting the 14th Amendment -- actually did change the wording of that amendment with the intention of creating a loophole through which corporations – artificial persons -- would later be able to claim entitlement to the same protections as were being afforded to 'natural persons' under the 14th Amendment, then that sort of surreptitious manipulation would have constituted a violation of Article IV, Section 4 of the Constitution because, clearly, the testimony of Conklin and Bingham indicated that they were not acting with: Impartiality, objectivity, fairness, or integrity when they were on the Congressional committees that were drafting the 14th Amendment, and, therefore,

neither of them was providing the states with a republican form of government.

In 1938, 56 years after the aforementioned San Mateo County case, Justice Hugo Black wrote a dissenting opinion in relation to *Connecticut General Life Insurance Company v. Johnson* and indicated in his opinion that if one were to search all of the Congressional literature surrounding the framing and passage of the 14th Amendment, one will not find any evidence indicating that corporations were intended to be among those persons that were to be extended protections under the 14th amendment. However, Justice Black goes on to claim in his 1938 opinion that four years after the aforementioned 1882 case, another case -- *Santa Clara County v. Southern Pacific Railroad* -- was heard by the Supreme Court and "… this Court [that is, the Supreme Court] decided for the first time that the word 'person' in the amendment did in some instances include corporations" but, as will be noted shortly, Justice Black allowed himself to be misled – as many other judges and lawyers have permitted themselves to be misled -- by the literary head notes that were added by a court reporter (J.C. Bancroft Davis) for a book that was supposed to provide an overview of, and introduction to, the *Santa Clara County v. Southern Pacific Railroad* decision (along with head notes and accompanying decisions for a number of other Supreme Court cases) and, yet, contrary to the claims of J.C. Bancroft Davis and Justice Huge Black, the actual Supreme Court decision in the *Santa Clara County v. Southern Pacific Railroad* case <u>never addressed</u> the issue of corporate personhood.

The foregoing case revolved about the issue of taxes. For six years, Southern Pacific Railroad had been objecting to the manner in which Santa Clara County was assessing taxes.

As a result, for six years the railroad had decided not to pay taxes to the county. One thing led to another, and, eventually, the case ended up in the Supreme Court.

S. W. Sanderson represented Southern Pacific Railroad. Delphin M. Delmar appeared before the Court on behalf of Santa Clara County.

Arguments concerning the case began in January of 1885. The Supreme Court issued its decision nearly a year and a half later in May 1886.

As many corporate lawyers previously had attempted to do in a variety of other legal cases – but, up to that time, always unsuccessfully – part of Sanderson's strategy to defend Southern Pacific Railroad (it was just one dimension of a six-pronged attack) involved arguing that corporate persons were equal to human persons and, therefore, should be afforded equal treatment under the 14th Amendment. Sanderson made references to that segment in the Declaration of Independence indicating that all men are created equal.

In other words, however different men might be in other ways (for example, racially or ethnically), nonetheless, they all should be considered to be equal before the law. The implication of the foregoing perspective is that although there might be differences between human persons and corporate persons, nevertheless, before the law – and under the 14th Amendment – human persons and corporate persons should be considered to be equal.

The Declaration of Independence did not say that "all persons are created equal," but, rather, it said that: "all men are created equal." Corporations are not men, nor are they women, nor are they transgender because, in the latter case, there was no gender assigned to a corporation at birth based on biological considerations and toward which, over time, the corporation developed a conscious conflict concerning the nature of the corporation's sense of gender identity while trapped in various biological features that run contrary to the alleged developing sense of gender identity in the corporation that is being alluded to above.

One of the complaints of the Southern Pacific Railroad was that the state of California did not have jurisdiction to assess taxes in relation to a fence that bordered the railroad's right-of-way. According to lawyers for the railroad, the county, and not the state, should have made the tax assessment.

The 14th Amendment angle concerning the foregoing argument is as follows. The railroad lawyers claimed that the state was assessing the company for the full value of the railroad's property without permitting the company to deduct the mortgage as the state permitted human beings to do when the latter individuals were being assessed for taxes, and, therefore, according to the lawyers for the railroad,

corporate persons were not being treated in the same way that human persons were being treated.

The Supreme Court agreed with that part of the railroad's complaint concerning the issue of jurisdiction. More specifically, the Court ruled that the state did not have jurisdictional authority to assess taxes in relation to the fenced area that bordered the railroad's right-of-way, but the Court said nothing at all about issues involving personhood, corporations, equality of treatment, and the 14th Amendment … other than to indicate that since the case could be decided without having to resolve questions concerning the 14trh Amendment, then there was no need to explore those sorts of issues.

The Supreme Court's decision in *Santa Clara County v. Southern Pacific Railroad* was announced on May 10, 1886. Purportedly – there is no independent, corroborating evidence to verify the court reporter's account with respect to the following set of circumstances – prior to releasing the Court's decision, Chief Justice Morrison Remick Waite addressed the lawyers for Santa Clara County and indicated that the Court did not want to hear any arguments concerning whether, or not, the 14th Amendment applied to corporations because as far as the Court was concerned that understanding of the amendment did apply, and, then, Waite reportedly turned the proceedings over to Justice Harlan who delivered the Court's opinion in the Santa Clara County case.

J.C. Bancroft Davis, the court reporter for the foregoing proceedings, wrote a book that later was given the title: *Volume 118 of the United States Reports: Cases Adjudged in The Supreme Court at October Term 1885 and October Term 1886.* Banks and Brothers Publishers released the book in 1886.

The head note that precedes the actual decision for the *Santa Clara County v. Southern Pacific Railroad* offers conflicting evidence for whether, or not, Chief Justice Waite ever said the words that are attributed to him in the foregoing account of what – if anything – was said to the lawyers for Santa Clara County just prior to the release of the Court's decision in the case involving Southern Pacific Railroad and Santa Clara County. The first section of the head notes that were provided by J.C. Bancroft Davis (and, therefore, was not a part of the Supreme Court's decision) stated: "The defendant Corporations are

persons within the intent of the clause in section 1 of the Fourteenth Amendment to the Constitution of the United States, which forbids a State to deny any person within its jurisdiction the equal protection of the laws."

However, further down in the introductory notes provided by J.C. Bancroft Davis one finds the following statement: "The main – and almost only – questions discussed by counsel in the elaborate arguments related to the constitutionality of the taxes. This court, in its opinion, passed by these questions and decided the cases on the questions whether under the constitution and laws of California, the fences on the line of the railroads should have been valued and assessed, if at all, by the local officers or by the State Board of Equalization."

In other words, according to J.C. Bancroft Davis, himself, the Court by-passed all questions except those that concerned whether county officials or the State Board of Equalization should have jurisdiction to assess taxes in conjunction with a fence that bordered a right-of-way belonging to the railroad. Questions involving: Corporations, personhood, and equal treatment under the 14th Amendment, were all left unaddressed.

So, what is one to make of the opening statement in Davis' head notes in which the court reporter claimed that Chief Justice Waite indicated that the members of the Court believed that the 14th Amendment was intended to encompass corporate persons? The text of the decision for *Santa Clara County v. Southern Pacific Railroad* did not include any words, passages, or comments elaborating upon that issue.

Let's assume, for the sake of argument, that the account of J.C. Bancroft Davis is true (even though there are historical treatments concerning the events of that day which indicate Davis – knowingly or unknowingly – misunderstood or misrepresented what took place at the Supreme Court prior to the Court's delivery of the Santa Clara County decision). Let's assume that Chief Justice Waite did address the lawyers for Santa Clara County prior to the Court's releasing its decision and during those comments indicated that the justices didn't want to hear any arguments concerning whether, or not, the 14th Amendment was intended to extend its protections to corporate

persons as well as human persons because the members of the Court were of the opinion that such an extension had been intended in relation to that amendment.

The question that needs to be asked is the following one. What is the basis for Waite's opinion given that there is no historical evidence – other than the self-serving testimony of two unscrupulous, former members of Congress, along with unsubstantiated claims concerning a secret Congressional journal that has never been discovered – to prove that all the individuals who drafted the 14th Amendment, as well as those who ratified that amendment, each clearly understood that the amendment was intended to encompass corporate persons?

Having an opinion on a matter – even if one is a member of the Supreme Court or its Chief Justice -- is not enough. One must be able to defend that opinion and show how – in detail – that kind of an opinion is consonant with the Constitution, and, yet, there is nothing in the Constitution that is capable of justifying treating human persons and corporate persons as being equivalent to one another.

Moreover, Article IV, Section 1 requires that the foregoing kinds of opinions and judgments must be rooted in qualities of: Impartiality, objectivity, independence, fairness, honor, integrity, selflessness and not being a judge in one's own cause. There is no evidence to indicate that any claim concerning the equivalency of natural persons and corporate persons is capable of being demonstrated while simultaneously exhibiting the foregoing qualities.

Prior to becoming a Justice of the Supreme Court, Morrison Waite had spent considerable time defending corporations and railroads. If he believed before coming to the Supreme Court that corporations were persons and that the protections of the 14th Amendment should be extended to corporations, then, as a Supreme Court Justice he must be able to clearly and rigorously demonstrate – impartially, objectively, independently, fairly, selflessly, as well as with integrity and honor -- how his belief concerning corporate persons is supported by the basic text of the Philadelphia Constitution, together with the 14th Amendment, and, if he cannot do this, then, he must recuse himself and declare that Article IV, Section 4 of the Constitution forbids him to be a judge in his own cause.

Even if one assumes that Chief Justice Waite said what the court reporter, J.C. Bancroft Davis, attributed to the Chief Justice prior to the latter's turning the proceedings over to Justice Harlan for the delivery of the decision in *Santa Clara County v. Southern Pacific Railroad*, those comments are nothing more than a declaration. There is no accompanying argument to demonstrate that his declaration has Constitutional weight capable of showing the validity of that perspective (i.e., that artificial persons are entitled to the protections of the 14th Amendment).

Chief Justice John Marshall declared in the *Trustees of Dartmouth College v. Woodward* case that corporations were artificial persons. However, Marshall did not provide viable, accompanying arguments to show that such a legal fiction had Constitutional support and was, thereby, capable of being clearly connected to foundational principles inherent in the supreme law of the land anymore than Marshall had provided a persuasive argument in the Dartmouth decision that was capable of showing how corporate charters are nothing but contracts.

Apparently, the people of the United States are supposed to let Chief Justice Waite proceed in the same manner as Chief Justice Marshall did. In other words, all those two individuals have to do is make declarations that they believe something is the case (e.g., that charters are contracts or that corporate persons are protected under the 14th Amendment), and all citizens – past, present, and future -- should just bow down and ignore the fact that neither Marshall nor Waite has offered any justification for believing as they do.

Furthermore, nearly as problematic as the foregoing considerations is the fact that more than half a century later, Justice Hugo Black seemed to be willing to accept the idea – apparently without reading the text of the actual decision in the *Santa Clara County v. Southern Pacific Railroad* case – that, for the first time, the Supreme Court had decided "that the word 'person' in the amendment [14th] did in some instances include corporations." One would be hard pressed to discover in the text of *Santa Clara County v. Southern Pacific Railroad* just what the particulars were of those instances in which corporate persons were to be protected by the 14th Amendment because there is nothing in that text that suggests what Justice Black is claiming in his 1938 dissenting decision.

All court decisions that are based – partly or entirely – on the idea that corporate persons are entitled to equal protection under the 14th Amendment are invalid. This is so since all such decisions entail violations of Article IV, Section 1 not only due to the previously noted ways in which the self-confessed, underhanded actions (if they actually occurred) of Roscoe Conklin and John Bingham sought to surreptitiously skew the wording of the 14th Amendment but, as well, because of the manner in which an array of Supreme Court Justices failed to exercise the necessary: Impartiality, objectivity, fairness, honor, and integrity during their process of adjudicating a variety of cases in conjunction with the corporate personhood issue because if those Supreme Court Justices had taken the time to diligently explore the issue of corporate personhood, they would have discovered that in the absence of biases seeking to illicitly serve the interests of corporations, there are no arguments capable of demonstrating that corporations are persons entitled to the same rights as human beings.

There is nothing in either the basic text of the Philadelphia Constitution considered as a whole, or in the 14th Amendment, that is capable of supporting the contention that corporate persons are entitled to equal protections under the law. In addition, there are no viable precedents (e.g., the San Mateo County or the Santa Clara County cases involving Southern Pacific Railroad, or Marshall's Dartmouth decision) that are capable of proving – on the basis of first principles of justice and constitutionality -- that so-called corporate persons are entitled to the same rights as human beings are.

All too many Supreme Court Justices have been working – erroneously as it turns out -- on the problematic assumption that corporate persons have the same legal standing within the Constitution as human beings do. The responsibility for demonstrating that the foregoing assumption is constitutionally viable is incumbent on those Justices, and they have consistently failed to provide the required proof … offering mere edicts rather than detailed, cogent, reasoned, legal arguments on the matter.

The foregoing considerations are not trivial issues. For example, following the Civil War, many farmers – especially in the South -- operated under the 'crop-lien' system. In other words, companies and merchants that supplied farmers with equipment and various

products needed for farming would often demand that a lien be placed on the crops of the farmer to whom they were selling merchandise.

The foregoing liens often carried an interest charge that ran as high as 25 percent. In effect, millions of farmers – both black and white – were subjected to slave-like working conditions.

In addition, throughout the Midwest, railroad companies and banks often charged farmers excessive interest rates and toll charges in conjunction with the shipment of farm products to markets. Moreover, grain elevator operations frequently levied unreasonably high charges for storing crops prior to those products being shipped to millers for processing.

The aforementioned railroad, storage, and banking enterprises were empowered by many state governments to become monopolies that controlled the lives of farmers. Empowerment was bestowed upon corporations in exchange for money and other "gifts" that were paid to various state officials for the latter's co-operation.

The economic crisis of 1873 undermined the system of patronage that had been forged between an array of companies and various state governments. In other words, due to dire economic contingencies, the foregoing companies either had to declare bankruptcy and drop out of the bribery game, or they ran short of the funds needed to oil the machinery of government, and, as a result, many of the previously bought state governmental officials began to make decisions – in response to pressure from farmers and other groups -- that did not serve the interests of those companies.

Having, to some extent, lost control at the state level, many corporations began to switch to an alternative strategy in order to try to establish an economic and financial environment that would serve their interests. More specifically, prior to -- but especially after the 1886 decision in the *Santa Clara County v. Southern Pacific Railroad* case had been published (complete with misleading head notes that were written by J.C. Bancroft Davis) -- corporations began to file suits challenging state laws that were attempting to alter the economic landscape by protecting farmers in one way or another.

In addition, during the first decade and a half of the 20th century, the Supreme Court of the United States repeatedly ruled against laws

in favor of: Workman's compensation; minimum wage, as well as placing constraints on various forms of child labor. During those rulings, the Court often made references to the rights of corporate persons as the reason why the aforementioned laws should be struck down.

The basis of many of the foregoing corporate challenges was rooted in the notion of "substantive due process", and this concept was connected to the "due process" clause of the 14th Amendment. In effect, corporations were claiming that they were being deprived of "liberty and property" by not being afforded the same protections of due process as natural persons enjoyed under the 14th Amendment.

Previously, judges had been in the habit of considering only the issue of 'procedural due process'. In other words, if a given law had been formulated and passed in accordance with rules that gave expression to legitimate exercises of federal authority or accepted state police powers, then judges were inclined to consider such a law to be in compliance with the requirements of procedural due process and, as a result, was considered to be worthy of being upheld and would only be struck down if that law was considered to have violated procedural due process somewhere along the line of being drafted, passed, or enacted.

The issue of "substantive due process" focused on whether a given law violated some substantive right that was supposed to be protected under the 14th Amendment … such as the right to liberty and property. A law might comply with the requirements of procedural due process and, yet, still be in violation of substantive due process because although the process of drafting, passing, and enacting that law had all been done in an appropriate manner, nonetheless, the law denied an aggrieved party – e.g., a corporation -- the protection of rights to which they felt entitled under the 14th Amendment.

One of the liberties with which corporations were most concerned involved "liberty of contract." Corporations considered many of the laws that were being enacted in various states involving issues of, for instance: Minimum wage, workmen's compensation, child labor, utility costs, storage fees, and transportation charges to constitute arbitrary forms of interference with the rights of private property to enter into whatever lawful contracts they liked and that increasingly – even

before the comments of Chief Justice Waite were allegedly given prior to the *Santa Clara County v. Southern Pacific Railroad* decision -- corporate lawyers were trying to argue were Constitutionally protected rights.

Consider the 1884 New York State case: *In re Jacobs*. The suit pitted the assumed right of a state to exercise its "police powers" in order to protect the safety and health of the public against a company that believed it had the right to due process in conjunction with issues of "liberty and property" that affected business operations.

On one side of the battle was someone who manufactured cigars while operating out of a tenement setting. On the other side of the conflict New York City officials, and they were concerned about the dangers that a tenement-house cigar manufacturing operation posed to both workers and the public due to deplorable working conditions.

Jacobs was a realtor who was arrested in May of 1884, two days after New York City had passed "an act to improve the public health by prohibiting the manufacture of cigars and preparation of tobacco in any form in tenement-houses in certain cases, and regulating the use of tenement-houses in certain cases." Jacobs was subsequently sentenced to serve a short time in jail.

The defendant appealed his conviction, and the original verdict was overturned on the grounds that the law under which Jacobs was convicted was unconstitutional. Consequently, Jacobs was ordered released from incarceration.

The attorney general for the state appealed the foregoing decision. The State Supreme Court upheld the earlier decision to vacate the conviction of Jacobs

In its brief to the state's highest court, lawyers for New York City had provided information on a variety of health and safety problems that were entailed by the process of rolling cigars in the poor working conditions present in the tenements where Jacobs' cigar business was being conducted. The lawyer for the cigar manufacturer – William Evarts, a former United States attorney general – argued that the laws of: Supply and demand, competition, and struggle for success were more important considerations than potential health and safety hazards.

Evarts didn't try to counter the data and arguments that were put forth by the opposing side concerning the health and safety problems associated with cigar manufacturing. Instead, Evarts ignored that evidence and merely indicated that he failed to see how the health of workers engaged in the process of manufacturing cigars in New York could be improved by requiring them to perform their jobs in another location, and, therefore, Evarts was using his own ignorance of the situation as a standard for identifying potential safety and health problems that might be associated with the manufacture of cigars in a tenement-house setting.

The position being pushed by Evarts gave expression to the ideas of Social Darwinism in which economics, like life, was supposedly caught up in a set of natural laws that demanded each of us to engage in a struggle for survival. Such a perspective required society to pursue laissez-faire policies in which state safety and health laws were considered to constitute arbitrary forms of interference in the natural scheme of things.

At the time, many law schools and law journals were awash with the foregoing sorts of ideas. In addition, various segments of the legal community – both lawyers and judges – were, to varying degrees, influenced by the principles and ideas of Social Darwinism … and to the extent that court decisions were affected by such philosophical considerations, then, those decisions would have been in violation of Article IV, Section 4 of the Constitution because they would not have been arrived at in an: Impartial, objective, independent, and fair manner … unless, of course, one could demonstrate in an impartial, objective, and fair manner that Social Darwinism was a correct account of reality.

In its decision for the Jacobs case, the State Supreme Court stated: "The constitutional guaranty that no person shall be deprived of his property without due process of law might be violated without the physical taking of property for public or private use. Property might be destroyed, or its value might be annihilated; it is owned and kept for some useful purpose and it had no value unless it can be used. Its capability for enjoyment and adaptability to some use are essential characteristics and attributes without which property cannot be conceived; and hence any law which destroys it or its value, or takes

away any of its essential attributes, deprives the owned of his property." The decision went on to assert that: "Liberty, in its broad sense as understood in this country, means the right, not only of freedom from actual servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation."

Later on in the decision, the Court argued: "… the claim is made that the legislature could pass this act in the exercise of the police power which every sovereign State possesses. This power is very broad and comprehensive, and is exercised to promote the health, comfort, safety, and welfare of society. … The limit of the power cannot be accurately defined, and the courts have not been able or willing definite to circumscribe it. But the power, however broad and extensive, is not above the Constitution."

At this point, the Court's decision cited the work of Judge Cooley who had written the book: *Treatise on Constitutional Limitations*. The Court indicated that "Judge COOLEY, speaking of the regulation by the legislature under the police power of the conduct of corporations holding inviolable charters, says: "The limit to the exercise of the police power in these cases must be this: The regulations must have reference to the comfort, safety and welfare of society; they must not be in conflict with any of the provisions of the charter, and they must not, under pretense of regulation, take from the corporation any of the essential rights and privileges that the charter confers. In short, they must be police regulations, in fact, and not amendments of the charter in curtailment of the corporate franchise."

One could question the Court's claim in the foregoing statement that corporations hold "inviolable charters." Although John Marshall's decision in *Trustees of Dartmouth College v. Woodward* certainly tried to make it seem as if corporate charters were inviolable, nonetheless, Marshall never actually put forth a viable argument in his decision that clearly demonstrated the details of how a corporate charter supposedly was inviolable, and, instead, he relied on the mere claim (without any accompanying argument) that charters were contracts with which the state could not interfere and, as well, on the claim

(without any accompanying argument) that corporations were immortal beings and artificial persons.

In any event, the Court was conflating a number of issues during the Jacobs decision. For example, no one would question that "Liberty, in its broad sense as understood in this country, means the right, not only of freedom from actual servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation." However, the question before the Court was whether, or not, the cigar manufacturing in which Jacobs was engaged was a lawful activity within the tenement-house in which he lived.

According to the city of New York, Jacobs was breaking the law that regulated what could, and could not, take place within tenement-houses. Furthermore, contrary to the aforementioned argument of the Court – namely, "Property may be destroyed, or its value may be annihilated; it is owned and kept for some useful purpose and it had no value unless it can be used. Its capability for enjoyment and adaptability to some use are essential characteristics and attributes without which property cannot be conceived; and hence any law which destroys it or its value, or takes away any of its essential attributes, deprives the owned of his property" – the city had not annihilated the value of Jacobs' apartment nor had the city taken away any "essential attributes" of that property.

The tenement facility in which Jacobs resided was a dwelling. He could eat there; he could sleep there; he could pray there or read there; he could conduct various kinds of family functions there, and he could entertain himself there … and, in fact, he could even work there if the nature of his work did not entail a discernible potential for putting either Jacobs or other people at risk with respect to issues involving health or safety.

When the city restricted the uses to which tenement-houses could be put, the city did not deny Jacobs anything of an essential nature. Furthermore, the reasons why Jacobs was being denied the right to use his dwelling as a certain kind of work space was not arbitrary but was because of a variety of health and safety issues – which were specified in the City's brief to the Court -- that had a potential for

interfering with the rights of other people who were living in relatively close proximity to the cigar-making operation and that might prevent those other individuals from being able to exercise liberties of their own within their place of residence … for instance, if a fire broke out in Jacobs' cigar-making operation and spread to the rest of the building, then, the rights of other individuals might be put at risk.

As noted earlier, the Court went on to argue that: "… the legislature could pass this act in the exercise of the police power that every sovereign State possesses. This power is very broad and comprehensive, and is exercised to promote the health, comfort, safety, and welfare of society. … The limit of the power cannot be accurately defined, and the courts have not been able or willing definite to circumscribe it. But the power, however broad and extensive, is not above the Constitution." Yet, the Court never actually showed in the Jacobs decision that the City's law was unconstitutional, but, instead, the Court merely asserted that, somehow, the liberty of an individual and the nature of property apparently are inherently superior to the power, within limits, of government trying to protect the health and safety of its citizens.

When courts assert that something is the case without actually providing an explanation for how that something is the case, then, one is usually dealing with judicial biases and assumptions. The Court's decision in the Jacobs case did cite, and quote from, a variety of references in an attempt to lend credence to some of the claims it made in that case, but those citations/quotes merely involved variant wordings of the position being put forth by the court and contained nothing in the way of argument that demonstrated how the ideas being cited and quoted proved the correctness of the Court's position vis-à-vis *In re Jacobs*.

The fact one can find passages in various books of law (or on law) that agree with the position one is advocating doesn't necessarily constitute a valid precedent. For a precedent to have validity, one must be able to show that the material being cited/quoted accurately reflects all relevant constitutional principles that bear upon a given issue.

As has been noted earlier in the present chapter, property has a very shady and morally questionable history in the United States. And

while many courts and governments – whether local, state, or federal – have championed the cause of property, nevertheless, all too frequently, that support has consisted of nothing more than people in power serving as judges in their own cause (namely, protecting the alleged rights associated with property), and, therefore, acting in violation of Article IV, Section 4 of the Constitution.

The Court did say in the Jacobs decision that: "When a health law is challenged in the courts as unconstitutional on the ground that it arbitrarily interferes with personal liberty and private property without due process of law, the courts must be able to see that it has at least in fact some relation to the public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end. This we have not been able see in this law, and we must, therefore, pronounce it unconstitutional and void." The problem with the foregoing statement is that at no point during the Jacobs decision did the Court demonstrate how the New York City health law of 1884 constituted an arbitrary interference with personal liberty or private property.

The Court claimed that the New York City law: "… was not intended to protect the health of those engaged in cigar making, as they [i.e., cigar makers] are allowed to manufacture cigars everywhere except in the forbidden tenement houses." Nonetheless, while it might be true that cigars are made under a variety of conditions, New York City wasn't trying to interfere with the manufacture of cigars in those other circumstances, but, instead, was limiting its focus to what transpired in tenement-houses, and the fact that cigar-making might safely take place within the context of a variety of other venues says nothing at all about whether, or not, cigar-making within tenement-houses also constitutes a safe environment for that sort of activity.

The foregoing is akin to saying that because horses can be safely ridden in a variety of venues throughout the state, then, therefore, horses can be safely ridden in tenement-houses. Different circumstances entail different degrees of potential danger for health and safety, and there is no indication that the Court in the Jacobs case made much, if any effort, to determine what the actual dangers might be when one combined cigar-making and tenement houses.

Furthermore, according to the Court, the law was not "… intended to protect the health of that portion of the public not residing in the forbidden tenement-houses, as cigars are allowed to be manufactured in private houses, in large factories, and shops in the two crowed cities, and in all other parts of the State." Nevertheless, issues involving health and safety within tenement-houses where cigar-making takes place were never specifically addressed during the Court's decision but, rather, the Court felt it was enough to indicate that because cigar-making did occur in other places within the City and within the State, then, somehow, this proved that cigar-making in tenement-houses must be alright even though the City believed – based on considerable evidence and experience -- that there was something that was potentially problematic about making cigars in tenement-houses … problems that the Court never addressed.

The Court in the Jacobs case claimed that: " … the courts must be able to see that it [i.e., a law] has at least in fact some relation to the public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end. This we have not been able see in this law. And, yet, there is no evidence in the Jacob decision that the Court ever actually examined the conditions in the tenement-houses toward which the 1884 City law was directed

So, in what sense was the City's interference with respect to the making of cigars in tenement-houses either arbitrary or unwarranted? In what way – specifically -- was the New York City law of 1884 concerning the making of cigars in tenement houses unconstitutional?

Even if one believes that property encompasses an array of rights and privileges that are superior to the rights and privileges associated with police powers of the state, one must be able to show -- through impartial, objective, and fair means (and this is the burden of proof that Article IV, Section 4 places on any legal argument) -- that, Constitutionally speaking, the rights and privileges of property are, in fact, superior to the rights and privileges of police powers. However, the Court in the Jacobs case did not meet that burden of proof.

As noted earlier, at one point in its decision, the Court in the Jacobs case quoted Judge Cooley in conjunction with the latter individual's comments concerning what he considered to be the relationship between the police powers of the legislature and the

behavior of corporations that, supposedly, hold inviolable charters. More specifically, Judge Cooley argued: "The limit to the exercise of the police power in these cases must be this: The regulations must have reference to the comfort, safety and welfare of society; they must not be in conflict with any of the provisions of the charter, and they must not, under pretense of regulation, take from the corporation any of the essential rights and privileges which the charter confers. In short, they must be police regulations, in fact, and not amendments of the charter in curtailment of the corporate franchise."

One wonders on what basis Judge Cooley can claim that police powers of the state are limited in instances where those powers come into "conflict with any of the provisions of a [corporation's] charter." The charter of a corporation is a permission that enables a certain kind of operation or activity to exist and is conferred by the state, and what the state gives in this sense can also be taken away by the state.

Moreover, one wonders why – as the granting agency – the state cannot "take from the corporation any of the essential rights and privileges which the charter confers." The corporation is entirely dependent on the state for its existence, so, how does a corporation come to have essential rights and privileges that are independent of the state that created an array of rights and privileges that come into existence, and continue on, only at the pleasure of the state?

Judge Cooley's foregoing position carries no Constitutional weight. His perspective has not been shown to reflect fundamental principles inherent in either the Preamble to the Constitution or Article IV, Section 4 of the Constitution. In other words, neither Judge Cooley nor anyone else has been able to demonstrate that if one exercises: "Impartiality, objectivity, independence, fairness, integrity, and, in addition, avoids serving as a judge in one's own cause that one necessarily comes to the conclusion that corporate charters are inviolable or contain rights and privileges that cannot be abridged or voided by the state without seriously impairing the ability of the government "to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, or secure the blessings of liberty for ourselves and our posterity."

The Jacobs decision was delivered two years before the *Santa Clara County v. Southern Pacific Railroad* case was decided by the Supreme Court of the United States in 1886, and, then, the latter decision was subsequently published in a form that was accompanied by the misleading head notes of the court reporter, J.C. Bancroft Davis, claiming that Chief Justice Waite and other Justices of the Supreme Court supposedly believed corporate persons were protected under the provisions of the 14th Amendment and that, as a result, many people in legal circles subsequently – but erroneously -- considered to be a precedent. Yet, the Jacobs decision contains a subtle argument that juxtaposes the alleged property rights of individuals and the alleged rights of corporations and, in the process, seeks to argue that corporations have inviolable rights when it comes to exercising due process in conjunction with the uses of property and the liberty of contracts, and, therefore, comes very close to echoing (allegedly) the protections that are being mentioned in the 14th Amendment without actually invoking those protections.

The foregoing considerations have importance because the Jacobs case was subsequently cited in hundreds of court cases as a precedent for supporting the liberty of contracts and rights of corporate property over against the rights of individuals and the state to be protected from the activities of corporations involving issues such as: Child labor; workmen's compensation; minimum wage, and a host of other issues that were treated by the courts as if the latter concerns constituted arbitrary interference with corporate activity. Just as the *Santa Clara County v. Southern Pacific Railroad* case did not demonstrate what subsequent lawyers and jurists thought it did (due to the problematic head notes of J.C. Bancroft Davis), so too, the Jacobs case did not demonstrate what subsequent lawyers and jurists often have tried to claim on its behalf because – as has been pointed out during the previous eight, or so, pages, the Constitutional logic of the Jacobs decision is muddled in a variety of ways.

The 1884 decision in the Jacobs case did not show in an impartial, objective, fair manner – that is, it did not meet the Constitutional burden of proof set forth in Article IV, Section 4 – that the liberty of contracts and rights of property (which often are presumed to exist in conjunction with corporations or businesses) automatically have

inherent priority over the concerns of individuals and states for the protection of the latter's own rights to sovereignty.

The Preamble to the Constitution is about people. It is not about corporations or artificial persons.

Liberty of contract and the rights of property are subservient to the purposes of: Forming a more perfect union, establishing justice, ensuring domestic tranquility, providing for the common defense, promoting the general welfare, and securing the blessings of liberty for everyone in America and not just for businesses and corporations. Furthermore, liberty of contract and the rights of property must serve the principles in the Preamble in accordance with the requirements of a republican form of government that depends on qualities of: Impartiality, objectivity, independence, fairness, selflessness, honor, integrity, and not being a judge in one's own cause.

The people of property have power, and, as a result, they have a multiplicity of resources on which to call to protect their interests. Consider the case of Eugene Debs.

Between 1877 and 1894 there were several railroad strikes that took place in the United States. Railroad workers had a variety of complaints including the fact that approximately 2,000 railroad workers a year died from accidents, and tens of thousands more railroad workers were seriously injured each year, and, therefore, there were concerns about the safety and health of working conditions among railroad workers.

Another source of friction had to do with wages. The railroad strike of 1894 was larger and more violent than the strike of 1877, and it started out as a protest against pay cuts.

More specifically, in June of 1894, workers employed by the Pullman Palace Car Company in Illinois walked off the job in response to a series of pay cuts that had been exacted by their employer, including one cut of 30%. Pullman made the railroad cars that were used by passengers for dining and sleeping during long railway trips.

A couple of years prior to the foregoing strike, an economic downturn in 1893 had induced a relatively small group of individuals to form the American Railway Union under the leadership of Eugene Debs who hailed from Indiana and had been working in the railroad

industry since he was 15 years old. Although each kind of job in the railroad industry had its own union – and railroad owners exploited this set of circumstances by playing one union off against other railroad unions -- Debs was interested in uniting railroad workers under the umbrella of one union.

When the Pullman workers went on strike, Debs urged his union – which had rapidly grown to nearly 150,000 members – to support the Pullman strikers by refusing to service or deal with Pullman cars. As a result of the actions of the American Railroad Union members, passenger travel in the United States came to a stand still within a very short period of time.

In addition to passenger trains, the Pullman strike being supported by the American Railway Union soon spread to freight trains as well. Naturally, the railroad companies did not stand idle in the face of the threat to business that was posed by the growing strike.

Officials for the General Managers Association – an organization that represented 24 railroads – contacted Richard Olney who was Attorney General in the administration of Grover Cleveland. Previously, Olney had been a lawyer for the railroad.

Olney arranged for a number of warrants to be issued with respect to anyone who interfered with the delivery of U.S. mail. Since at one point or another the vast majority of mail was transported via rail, many striking railway workers would be considered – directly or indirectly -- to be interfering with the delivery of mail.

Although the Constitution empowers Congress to "establish post offices and post roads", there is nothing in the Constitution that requires railroad workers to assist in, or facilitate, the delivery of mail. To be sure, it might be both "necessary and proper" for someone to deliver mail in order for the post office to be able to fulfill its function, but the 13th Amendment indicates that: "Neither slavery nor involuntary servitude except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States", and, presumably, striking railroad workers might consider being forced by the federal government to move the mail to be an instance of "involuntary servitude".

Moreover, the Preamble to the Constitution encompasses many principles that call into question the authority of the federal government to compel striking workers to deliver the mail. In other words, it would be incumbent on the federal government to be able to show that delivery of the mail was more crucial to: 'Forming a more perfect union; establishing justice; ensuring domestic tranquility; providing for the common defense; providing for the general welfare, and securing the blessings of liberty for ourselves and our posterity' than was the right of workers to strike with respect to issues of pay, safety, or health.

In addition, one should keep in mind that Attorney General Richard Olney was a former railroad lawyer. In order to comply with the requirements of Article IV, Section 4 of the Constitution, Olney needed to recuse himself in the matter because there was at least the appearance of a conflict of interest between, on the one hand, his past form of employment and, on the other hand, his present job as Attorney General in which he was actively opposing striking railroad workers by arranging for the issuing of warrants against those workers on behalf of the railroads.

Besides arranging for warrants to be issued, Olney also prevailed upon a federal attorney in Chicago to induce various federal judges to draw up a comprehensive injunction against strikers that was intended to prevent any tactics involving: Persuasion, intimidation, force, violence, or threats that might be used by strikers. The legal basis for the federal injunction rested – rather precariously -- on the Sherman Antitrust Act that had been passed into law in 1890 in order to prevent businesses (not unions) from combining or conspiring together in an attempt to restrain trade in relation to either interstate or foreign commerce, but that Act was now being applied to striking workers.

However, the striking workers were not combining and conspiring together to restrain trade in the sense of controlling an industry exclusively for the benefit of the union while, simultaneously, seeking to harm the public or other businesses. The striking workers were acting to promote the principles inherent in the Preamble to the Constitution and, consequently, were asking for railroad companies to act in accordance with those principles.

In fact, a good candidate to consider for someone acting contrary to the provisions of the Sherman Antitrust Act in the Pullman affair would be the aforementioned General Managers Association that represented 24 railroads. After all, that organization was colluding and conspiring with federal officials to restrain the commercial activity of striking workers in order to gain benefit for itself and the railroad companies it represented while doing damage to thousands of workers and their families.

The injunction being sought by Olney was directed toward any acts of the strikers that involved violence, force, intimidation, threats, or persuasion. Yet, apparently, it was okay for the government to engage in the very actions it was enjoining against even though its actions were serving the interests of the railroads and, therefore, violating the purposes for which the Sherman Antitrust Act had been brought into existence.

Eugene Debs indicated that he would actively resist the aforementioned injunction. However, he implored striking workers not to resort to violence during their protests.

Unfortunately, to some extent, his words went unheeded. The frustration and anger of some striking workers boiled over, and, as a result, a few rail lines were blocked and some freight cars were derailed, and, in several instances, train engineers who were not participating in the strike were pulled from their trains to prevent the latter individuals from carrying out railroad business.

There is no doubt that the foregoing actions created problems for the railroad companies. Whether those problems were sufficient to bring in federal troops is another matter.

However, on July 6, 1894, President Cleveland – due to the urging of his Attorney General (ex-railroad lawyer Richard Olney) – ordered hundreds of troops into Chicago to deal with some 5,000 strikers and their supporters. In short order, 13 individuals were killed by the troops and 57 others were wounded, while hundreds were jailed.

The federal injunction had forbidden striking railroad workers from using peaceful measures to resolve their conflict with the railroads. In other words, the striking workers could not use any methods of persuasion – such as leaflets, letters, handbills, or speeches

– and, therefore, it is not surprising – however regrettable -- that violence of one kind or another broke out during the strike since the strategy of the railroads appeared to be one of leaving workers with no options but violent ones.

Quite clearly, the federal government (in the form of Attorney General Olney, President Cleveland, and a covey of federal judges) considered the interests of property to be more important than human lives. The federal government didn't seem to care about the violence that was being perpetrated on railroad workers by the railroad companies as a result of the thousands of deaths and tens of thousands of injuries that occurred each year due to unsafe and hazardous working conditions, nor did the federal government seem to care about the violence being perpetrated on railroad workers by the railroad companies due to the fact that low wages imposed numerous hardships on the workers and their families … and killing 13 people while injuring nearly 60 more and jailing hundreds of other individuals gave expression to yet another dimension of the violence that the federal government and the railroads were perpetrating against workers.

Why weren't warrants issued against the owners of railroad companies for the role they played in causing workers to strike and, in the process, interfered with the movement of mail? Why weren't injunctions issued to prevent railroads from continuing on with their oppressive treatment of workers? Why didn't President Cleveland send in troops to surround the railroad owners and force them to the bargaining table?

The property of the few trumps the needs of the many. The federal government was operating in accordance with biases and presuppositions concerning various theories of property and, as a result, it was not acting in compliance with the requirements of Article IV, Section 4 of the Constitution because the government was not exhibiting qualities of: Impartiality, objectivity, independence, honor, integrity, selflessness, and refraining from acting as judges in their own causes (i.e., defending the interests of property) during the Pullman strike.

Eugene Debs was tried, convicted, and sentenced to two years in prison. Later on, the Supreme Court of the United States unanimously

upheld Debs' contempt of court conviction for his act of defying the federal injunction that had been issued even though while defying that injunction he engaged in no actions involving: Violence, threats, intimidation, or force but, instead, sought to use purely peaceful means of persuasion to bring about change.

The office of the Attorney General for the United States, the President, a group of federal judges, and, now the Supreme Court had all joined in – each in their own way -- to advance the interests of property over people in the Pullman affair. In doing so, they all acted in violation of Article IV. Section 4 because they were operating out of a biased perspective in favor of property … a perspective that lacked impartiality, objectivity, fairness, honor, or integrity, and, as well, failed to serve the purposes and principles inherent in the Preamble to the Constitution.

If the scales of power at the turn of the 20th century were not already heavily weighted in favor of corporations that, for the most, were being treated with unwarranted largesse by court systems on both the state and federal levels, a series of events between 1910 and 1913 led to legislation that would change the financial and economic landscape of the United States, if not the world, for the next century. More specifically, over a period of three years, plans were put in motion that would lead to the Federal Reserve Act of 1913.

During the 1880s, almost all of the banks in the United States were corporations chartered by the federal government. These national banks were located in big cities and were permitted to, among other things, issue their own currencies in the form of bank notes.

However, within a fairly short period of time during the late 1880s and early 1890s, an increasing number of banks were being chartered through state government rather than by way of the federal government. For instance, by 1896, states -- rather than the federal government -- were issuing charters for 61% of all banks in America, and those state-chartered banks accounted for 54% of the deposits made in the country.

Furthermore, a little more than 15 years later, the foregoing figures had increased. The states had chartered 70% of all banks in America, and, in addition, those banks controlled nearly 60% of all deposits made in the United States.

Many of the new banks were located in the western and southern regions of America. Once-powerful New York and other eastern banks were not only losing market share but, as well, were losing their ability to shape economic events in the country.

Although the banking business was growing by leaps and bounds, it was not without its problems and risks. For example, many – if not most -- banks were prone to failure because during their search for profits by way of, among other things, interest charges, they usually lent out more money than they held in reserve deposits, and, consequently, when the economy experienced various sorts of panics (as occurred in 1873, 1884, 1893, and 1907), many of those banks experienced currency drains that led to insolvency because they had insufficient funds on hand to cover the demands of their depositors for the return of money that – at least in theory -- belonged to the latter group.

In order to deal with the foregoing problem, as well as in order to respond to having steadily lost – for several decades -- market share, profits, power, and influence to smaller, geographically dispersed banks, certain corporate interests in the East (representing large banking consortiums) decided to try to regain control of economic and financial activity in the United States. To accomplish their purposes, a group of seven people arranged to meet in secret off the coast of Georgia on Jekyll Island … a property that recently had been purchased by J.P. Morgan and several business associates.

The secrecy surrounding the meeting on Jekyll Island is somewhat reminiscent of the secrecy that pervaded the Philadelphia Convention of 1787. Furthermore, the political, economic, and financial ramifications that emerged from that secrecy were immense in both cases.

Four of the world's largest banking groups had come together on Jekyll Island. They were the Rockefeller and Morgan families from America, and the Rothschild and Warburg families from Europe.

The seven individuals who met on Jekyll Island were: Benjamin Strong, Frank Vanderlip, Charles Norton, Henry Davison, Paul Warburg, Abraham Andrew, and Nelson Aldrich. With the exception, perhaps, of Nelson Aldrich, all of the foregoing individuals took steps to ensure that their itineraries were hidden from public awareness.

Benjamin Strong served as the head of the Banker's Trust Company that was owned by J.P. Morgan. Frank Vanderlip represented William Rockefeller's National City Bank, probably the most powerful American banking concern of that time.

Charles Norton was president of the First National Bank of New York that was controlled by J.P. Morgan. Henry Davison was a senior partner in the J. P. Morgan Company.

Paul Warburg was a partner in Kuhn, Loeb, & Company, an international investment-banking house, and he had come to Jekyll Island on behalf of the European banking leviathan that was controlled by the Rothschild family. In addition, Paul Warburg was brother to Max Warburg who directed a group of banks in the Netherlands and Germany.

Abraham Andrew was Assistant Secretary for the United States Treasury Department. And, finally, Nelson Aldrich was not only father-in-law to John D. Rockefeller and a business associate of J.P. Morgan, but, as well, he was a United States Senator from Rhode Island who served as Chairman for the National Monetary Commission.

Aldrich possessed considerable investments in a variety of economic and financial sectors, including: Public utilities, manufacturing, and banking. Many people considered him to be a Congressional spokesperson for the interests of big business.

The seven individuals who gathered for a series of meetings on Jekyll Island were interested in solving a number of problems. However, there were two issues that were of particular concern to them.

To begin with, they wanted to regain control of financial and economic activity in the United States. Secondly, they wanted to find a way to persuade the members of Congress and the President of the United States that the plan being devised by the world's biggest banks was intended to serve the interests of the public rather than banking interests.

The banking plan being developed during the Jekyll Island meetings was couched in terms that gave the impression of being a means to simultaneously serve the interests of the public, the nation, and commerce by, among other things: Lowering interest rates,

preventing financial panics, and bringing stability to the economy (all of which the Federal Reserve System failed to do on any number of occasions). In reality, however, the plan was intended to enable certain private companies to take control of the economy by means of the banking system in order – whenever bankers considered it 'proper and necessary' to do so – to further their own interests at the expense of the nation, state governments, and the public.

As Mayer Amschel Rothschild, the founder of the House of Rothschild, is reported (possibly) to have said: "Let me issue and control a nation's money, and I care not who writes the laws." Irrespective of who might have uttered the foregoing idea, the individuals who were in attendance at the Jekyll Island meetings were intent on being able to issue and control the money supply in the United States, and, in the process, undermine the sovereignty of the federal government, state governments, as well as individual citizens of the United States.

For a group of business people to gather together in order to try and figure out a way of generating profits is to be expected. However, one of the problematic issues inherent in the Jekyll Island gathering is that it involved two members of the Federal government (Nelson Aldrich and Abraham Andrew) whose participation in those meetings constituted a violation of Article IV, Section 4.

The aforementioned two federal officials were intent on helping private commercial interests to induce the Federal government to cede its financial and commercial authority to private business interests. Consequently, when the ideas underlying the Federal Reserve System finally slithered its way to Congressional discussion, those two individuals could not possibly provide a republican form of government to each of the states since they would not be able to critically reflect on the banking plan being drawn up on Jekyll Island through qualities of impartiality, objectivity, fairness, honor, independence, and integrity as required by Article IV, Section 4.

What did it matter if a private consortium of bankers possessed financial and economic authority to control things rather than the Federal government? Consider the following.

Under the Federal Reserve System that arose out of the meetings on Jekyll Island three years later when it was enacted into law (and,

one should note that despite its name, that institution is not a government agency but a private entity), member banks create money by issuing debt in the form of loans. The rules of the Federal Reserve System permit banks to operate as a fractional reserve system in which sums of money are loaned out that are multiples of the amount of money that is on deposit at any given financial institution, and, therefore, money is, literally, created out of nothing by moving numbers about within an accounting framework that merely charts changes in credits and debits.

Banks make a profit by keeping loans in motion and, thereby, generating interest in conjunction with those loans. When loans are paid back, the bank's ability to create money is constrained because, as noted previously, according to the rules of the Federal Reserve System, the amount of money a bank can loan is based on a multiple of its deposits, and from an accounting perspective, loans that are paid back decrease the amount of deposits that are considered to be on hand and, thereby, decrease the amount of money that can be loaned out.

In fact, if all loans were paid back, then, for the most part, the dynamics of money would come to a stand still. After all, without the ability to create new money through the issuing of debt, the only money that a bank has is in the form of deposits from customers, together with the money that the stockholders of the bank had to put up initially in order to be allowed to open a bank.

Indeed, the aforementioned assets (shareholder investment plus deposits) merely constitute seed money. Those assets are needed in order to be allowed entry into a game in which money is created out of nothing through the issuing of debt and, then, the bank gets to charge interest for loaning out that which -- except from the perspective of accounting -- doesn't actually exist, and, therefore, the bank is able to make a profit without actually spending any of its own money.

If everything goes smoothly, the shareholders in a bank never risk any of their own money. The beauty of banking is that one gets to make a profit by creating money out of nothing and, then, loaning out that creation at interest … preferably at compound interest.

However, the foregoing Federal Reserve System leaves unanswered at least one very fundamental question. More specifically, why should the Federal government cede its authority to a consortium

of private banks in order to have the latter group of institutions do – for profit -- what the Federal government could accomplish on its own without having to drain resources from the government coffers in order to fill the vaults of private banks for providing a superfluous service?

Although the Constitution permits the Federal government to borrow money, why should the government incur costs in order to borrow from private institutions when the government can create money itself by doing the very same sort of thing that banks do when the latter institutions create money out of thin air. Moreover, rather than generating money through the creation of debt as private banks do, the government could create money out of nothing in order to underwrite projects that bring a constructive return (financially, commercially, and socially) to the government and its citizens and, in the process, help diminish, if not eliminate, income taxes as well as the national debt (and, to a considerable extent, the latter accumulates when interest-bearing treasury bonds are sold by the government in order to raise money to fund a variety of projects).

After all, among the powers of the government are the ability to coin money, as well as the authority to do whatever is "proper and necessary" to enable the Federal government to carry out its policies (and Alexander Hamilton alluded to such "implied" powers when he proposed creating a national bank during the administration of President George Washington). In other words, the federal government does not need to pay private banks for the privilege of becoming indebted to those institutions in order to be able to conduct its financial affairs and regulate commerce.

Without wishing to claim that there are no problems associated with the idea of establishing national, centralized, financial or financial-like institutions that are operated by government (and a lot of those problems are created by private banks trying to undermine such government-based banking systems), nonetheless, there are many examples of success in this regard. For example, consider: (1) The Model Public Bank created by the Quakers in colonial Pennsylvania; (2) the 1911 Commonwealth Bank of Australia; (3) the Bank of North Dakota that began in 1919; (4) the 1934 Reserve Bank of New Zealand; (5) the Japanese Postal Bank system that started

operating prior to World War II; (6) the Island of Jersey monetary experiment that was initiated in 1941 and was re-introduced in 1963; (7) the Treasury Branches of Alberta project during the 1930s and 1940s; (8) the Reconstruction Finance Corporation in the United States that helped to provide financial solutions for a variety of problems that arose during the Depression as well as the Second World War; and, (9) the modern Central Bank of China (For a more detailed exploration of the foregoing programs please read Ellen Brown's The *Public Bank Solution* published in 2013 by Third Millennium Press.).

The Jekyll Island group that met in 1910 wanted to prevent the United States government from serving as its own bank and, thereby, be in a position to regulate commercial and financial activity in a manner that would serve the purposes of the Preamble rather than advance the interests of banks. In short, the Jekyll Island group wanted to deprive the United States components of governance that are important to the latter's sovereignty and sought to accomplish that goal by entangling the country in a web of debt that would be spun by private bankers.

The Federal Reserve System was intended by the Jekyll Island seven to become a form of corporate welfare. In other words, the federal government would pay banks to unnecessarily saddle the nation with debt … a debt that has become so massive over the last three decades ($20 trillion and climbing) that the federal government (actually, the American people) cannot keep up with interest payments let alone chip away at the principle.

The debt is running at more than 100% of GDP, and, therefore, under the present circumstances, the debt can never be cleared. Such a state of affairs constitutes a concrete realization of the potential that was set in motion by the Jekyll Island seven in 1910.

In many ways, Paul Warburg – one of the Jekyll Island seven – was, perhaps, the primary conceptual architect of the Federal Reserve System. Warburg, for example, was the individual who proposed the idea of having twelve regional branches operating under the guidance of a Federal Reserve Board and, thereby, created the public impression that the banking system was decentralized even though, in reality, it was centrally operated.

In addition, Warburg was the person who suggested that the Federal Reserve System initially be set up as a very conservative-appearing institution that possessed a variety of safeguards. However, Warburg intended (as did the other members of the Jekyll Island seven) -- in very Machiavellian fashion -- to have those sham safeguards subsequently removed under cover of secrecy.

While Paul Warburg was the conceptual architect of the Federal Reserve System, the political face of the Federal Reserve Act (at least in the beginning) was Senator Nelson Aldrich – another member of the Jekyll Island seven – who introduced the bill to the Senate. The first draft of the bill was actually written by two other members of the Jekyll Island seven – namely, Benjamin Strong and Frank Vanderlip.

Although the foregoing practice has been, and continues to be, very common in Congress, utilizing people with vested interests to write legislation that will serve those interests is a violation of Article IV, Section 4 of the Constitution. There is nothing impartial, independent, disinterested, objective, fair, selfless, or honorable about such a process.

Senator Aldrich was also in violation of Article IV, Section 4. In other words, by being part of the foregoing deception, he became a judge in his own cause and, therefore, was not comporting himself in a republican fashion.

The Federal Reserve Act was co-sponsored by Congressman Vreeland. Vreeland had argued earlier – rather disingenuously -- that the Federal Reserve System constituted a means for effectively being able to combat against monopolies. Yet, this was like putting the fox in charge of the hen house because from the very beginning – i.e., the meetings on Jekyll Island -- the Federal Reserve System was envisioned as a financial monopoly.

While Congressman Vreeland might not have been one of the Jekyll Island seven, he was a co-conspirator. As a result, he also was in breach of Article IV, Section 4 of the Constitution.

As a way of paving the path for the introduction of the Aldrich-Vreeland Bill, a subcommittee of the House Committee on Banking and Currency had been established in 1912 to investigate – supposedly -- the many public complaints concerning the existence of a 'Money

Trust' that -- according to various segments of the population -- ran the country and was responsible for many of the ruinous financial and economic crises that plagued America from time to time. However, the investigation – known as the Pujo Committee -- was merely an exercise in subterfuge.

Bank-friendly members of Congress staffed the subcommittee. In addition, only bank-friendly academics and bankers themselves were called to testify before the subcommittee.

Within, and beyond, the halls of Congress, the words "bank reform" were very much in evidence. The Aldrich-Vreeland Bill was put forth as an idea that gave expression to the best way of embracing the issue of bank-reform.

Academics, bankers, certain newspapers, and various political organizations joined together to create the impression that there was a widespread, public demand for a solution to the banking crisis that had been created by the 'Money Trusts'. Consequently, when the Aldrich-Vreeland Bill surfaced, it seemed to be an organic response to the urgent needs of a nation when, in point of fact, the proposed legislation was the result of a multi-year campaign that had been organized by the Jekyll Island seven and their friends.

The Aldrich-Vreeland Bill never advanced far enough to be put to a vote. This is because in fairly short order -- between 1910 and 1912 -- the Republicans lost their majority in the House, and, then, in 1912, lost control of the Senate, and, as well, Republican William Howard Taft lost the presidency to the Democrats' Woodrow Wilson.

Although Taft, when President, had championed many of the protectionist policies of his Republican predecessor, Theodore Roosevelt, nonetheless, Taft was opposed to the Aldrich Bill. He saw the Bill for what it was – the establishment of a private banking system – and Taft correctly understood that the federal government would be disempowered to varying degrees if that Bill passed and, consequently, he wanted an enhanced role for the government in conjunction with banking issues.

Therefore, as far as banking interests were concerned, Taft had to go. Therefore, several confederates of J.P. Morgan approached Theodore Roosevelt prior to the 1912 election and induced him to

challenge Taft for the Republican nomination, but when Taft became the Republican candidate, Roosevelt was prevailed upon to run a third-party candidacy under the banner of the Bull Moose Progressive Party.

The strategy behind arranging for a third party to vie for the presidency was to split the Republican vote. Although Roosevelt might not win (and if he did, he was someone with whom J.P Morgan could work), nonetheless, Roosevelt's presence in the race made Taft's winning unlikely, and, as a result, an impediment to the Jekyll Island plan would be removed.

Even though one of the planks in the Democrats' political platform involved opposition to the Aldrich-Vreeland Bill, Wall Street bankers were financing Wilson's campaign to a considerable degree. More importantly, although Wilson was advocating ideas publically that were in line with the stated platform of the Democrats, privately, nevertheless, due to the influence of Colonel Edward House (a close friend of the banking industry), Woodrow Wilson already had agreed to support something akin to the Aldrich-Vreeland banking act.

The new version of the Jekyll Island banking system was titled the Glass-Owen Bill. It was introduced to Congress in 1913.

Carter Glass -- at that time Democratic Chairman of the House Banking and Currency Committee -- had been highly critical of the previous Aldrich-Vreeland Bill. However, Glass, by his own admission, knew little about the banking industry and, therefore, enlisted the help of Henry Willis, an economics professor from Washington and Lee University, to write a bill concerning the banking industry.

The aforementioned Colonel House, along with Professor Laughlin – another friend of the banking industry and a former teacher of Henry Willis – were also advising Congressman Glass. During the course of fashioning his banking bill, Glass had many conversations with the banking industry that were mediated by House, Laughlin, and Willis who, unknown to Glass, were all friends with the very industry that Glass believed he was reforming.

When all was said and done, the Glass Bill served the interests of the banking industry. It not only reflected the main features of the earlier Aldrich-Vreeland Bill, but there were many passages in the

Glass Bill that mirrored – virtually word for word – various sections of the earlier Aldrich-Vreeland Bill.

Subsequently, the Glass Bill was reconciled with a similar measure that had been authored by Robert Owen who in addition to being a Senator was also the president of a bank in Oklahoma. Owen, House, and Laughlin were all working from the same basic script.

The bill that Owen introduced into the Senate constituted a violation of Article IV, Section 4. As a banker, he was serving as a judge in his own cause by advancing a bill on banking that was intended to serve that industry rather than the American people.

Before introducing his legislation to the House, Glass arranged for public meetings to be held that purportedly were intended to receive public input with respect to the banking reform issue. In reality, however, the first draft of the Glass Bill already had been written before those public sessions were conducted, and the public meetings were being held in order to induce the public to believe that when the Glass Bill finally reached the floor of the House, then that document would give expression to the wishes of the people.

Although Glass was not a member of the Jekyll Island seven, and evens though Glass himself had been manipulated (through the efforts of House, Willis, and Laughlin) nonetheless, Glass was violating Article IV, Section 4 of the Constitution. He was not acting with integrity or honor when he staged public hearings that were never intended to sincerely call on the people for their help in resolving the banking reform problem.

At this point in the process, two members of the Jekyll Island seven engaged in a psy-op in an attempt to help provide further impetus for the passage of the Glass-Owen Bill. More specifically, Nelson Aldrich (who was aligned with J.P. Morgan's banking interests) and Frank Vanderlip (who was president of the National City Bank that was controlled by the Rockefeller family) began a campaign of vociferous, public opposition to the proposed Glass-Owen Bill and, thereby, created the impression that the banking industry felt deeply threatened by the foregoing piece of alleged banking-reform legislation that was churning its way through Congress … apparently, no one remembered the tale told by Uncle Remus in which Br'er Rabbit induced Br'er Fox to throw the rabbit into the very brier patch

toward which the rabbit feigned fear but, actually, would become the rabbit's means of escape.

The final obstacle to the Jekyll Island seven's version of banking reform was the Democrat William Jennings Bryan. Out of loyalty to the party, Bryan had kept a low profile with respect to criticizing the Glass-Owen Bill, and, yet, he also publically had stated that he could never support any legislation that empowered private banks to issue private money.

When Bryan reviewed a draft of the proposed banking reform bill in 1913, he discovered that the money to be used by the Federal Reserve System was not going to be from the government but from a private corporation – namely, the Federal Reserve Bank. In addition, Bryan became further alarmed when he learned that the heads of the twelve regional banks would all be bankers.

As a result of his discoveries concerning the nature of the Glass-Owen Bill, Bryan finally broke his silence concerning that piece of legislation and issued a number of demands. Bryan's authority within Democrat circles was considerable, and, therefore, he was in a political position to bring about the defeat of the Glass-Owen Bill if his objections were not addressed.

First, Bryan insisted that the Treasury must not only be the agency that issued the money being used within the Federal Reserve System, but, as well, the government must back such currency. Secondly, he stipulated that the President must appoint the individuals who would oversee the operations of the Federal Reserve System, and, in addition, those appointments had to be approved by the Senate.

Congressman Bryan, like Congressman Glass and President Wilson knew very little about banking. Each in his own way was easily misled and manipulated by those – such as the previously mentioned Colonel House – who were serving as advisors and, in the process, were surreptitiously advancing the interests of the banking industry.

Bryan's first demand was easily handled. The Treasury Department would print money, and, then, for a very small fee, that money would be sold to the Federal Reserve. In this way, the Federal Reserve System still would be able to control how that money was used and what interest rates would be charged.

Furthermore, Bryan's insistence that the currency should be backed by the full faith and credit of the government actually worked to the advantage of the banking industry. In other words, if the monetary system failed in some way, then Bryan's insistence that the government should serve as guarantors of the nation's system of currency meant that the government – that is, the American people – would become liable for those problems and not the banks … in short, if "necessary" (and it has been "necessary" on a number of occasions), the government would be required to subsidize the losses of private banks.

The other aforementioned demand of Bryan concerning Presidential appointment and Senate approval – which Bryan mistakenly believed would permit the government to be able to exercise some degree of political control over the banking industry -- was also easily handled. Like President Wilson, most of the individuals who assume the Executive Office know little or nothing about the intricacies of banking, and, therefore, they rely on the counsel of those (such as the Secretary of the Treasury or advisors like Colonel House) who tend to actively embrace the Jekyll Island system and who are, therefore, in a position to steer presidents in certain directions as far as potential candidates for the Federal Reserve System are concerned.

Furthermore, once people are appointed to, and approved for, the Federal Reserve System, the inner workings of that institution are maintained in secrecy for the most part. Consequently, the government has little, or no, political control over the policies and activities of the Federal Reserve System despite being able to appoint candidates and vote them in or out.

In addition, many of the individuals in the Senate who are required to approve Presidential appointments for the Federal Reserve System frequently are either as ignorant as the President is with respect to the intricacies of the banking industry – and, therefore, to such individuals one banker seems as good a candidate as any other – or those Senators have had a history of working with, and benefitting from, the private banking system and, consequently, have no interest in killing – or controlling – the goose that – from their perspective -- lays the golden-like eggs.

The latter sort of government official is in violation of Article IV, Section 4 of the Constitution when it comes to banking issues. Those individuals are not casting their votes on the basis of impartial, objective, disinterested, fair, and selfless considerations concerning either the qualifications of a given candidate for a position within the Federal Reserve System or as a function of what is actually needed to advance the principles inherent in the Preamble to the Constitution but, instead, those Senators are voting in accordance with the favorable biases they have for, and/or the advantages they stand to gain from, the private banking system.

Faux compromises along the lines outlined earlier were made in conjunction with the Glass-Owen Bill to induce Bryan to believe that his aforementioned demands were being made. In reality, all the changes were cosmetic in nature and nothing of substance had been affected … Bryan had been out-maneuvered.

Bryan's attention was further diverted when President Wilson appointed him to serve as Secretary of State. Bryan showed his appreciation for his nomination by acquiescing to the so-called compromises that had been incorporated into the Glass-Owen Bill and thanked the President for, among other things, having provided such illustrious leadership in fighting to preserve the right of government to issue its own currency … which under the provisions of the Federal Reserve Act might be technically correct but, in reality, still left the control of money firmly in the hands of a private banking system.

The Glass-Owen Bill – also known as the Federal Reserve Act – was released from the House and Senate joint conference committee on December 22, 1913 for purposes of further deliberation within the House and the Senate. However, since the members of both chambers were anxious to get home for the Christmas holidays, both the House and the Senate quickly put the proposed legislation to a vote with little, or no, discussion.

The foregoing act was approved for passage in each chamber of Congress. President Wilson signed the legislation into law on December 23, 1913.

To whatever extent the members of both chambers of Congress placed their desire for a Christmas vacation above critically engaging the Federal Reserve Act in an impartial, objective, disinterested, fair,

and selfless manner prior to voting on that bill, then to that extent, the requirements of Article IV, Section 4 of the Constitution were violated. A republican form of government requires more from its representatives and senators than merely going through the motions in order to give lip service to their sworn oath to protect and defend the Constitution against all enemies both foreign and domestic … and just prior to Christmas in 1913, 282 members of the House and 43 members of the Senate (the individuals who voted 'yea' for the Federal Reserve Act) gave away the financial keys to the kingdom to a private banking consortium.

On December 23, when President Wilson signed the Federal Reserve Act into law, the vision that had been set in motion three years before by the Jekyll Island seven (and their patrons) was realized. However, in order for that vision to be realized, many members of the Federal government had to renege on the guarantee that is given in Article IV, Section 4 of the Constitution.

Consequently, those individuals adversely affected the ability of government to realize, in substantive and concrete ways, the principles that are contained in the Preamble to the Constitution. In other words, they undermined the sovereignty of America by taking away the ability of the federal government to control its own monetary system and, thereby, self-fund the programs and policies that might best give expression to: Establishing justice; ensuring domestic tranquility; providing for the common defense; promoting the general welfare; and securing the blessings of liberty for ourselves and our posterity.

Chapter 7: Democracy and Arbitrary Governance

The idea of democracy conjures up an array of conceptual possibilities among people. In fact, the degrees of freedom swirling about that word are so amorphous and flexible that the term tends to become virtually devoid of meaning.

Although the impression that many people have in connection with the notion of democracy is rooted in the idea of 'majority rules', one of the primary motives that pushed James Madison to draft a constitutional document in the first place was his abhorrence of what took place within state legislatures as well as the Continental Congress when majorities wielded power. Given those concerns, he began to prepare for the Philadelphia convention with the goal of providing a framework for governance that would be able to protect minority interests from being overrun by majority rule, and, therefore, Madison tried to envision a system that would contain a variety of checks, balances, and principles that would be able to constrain majorities from merely riding roughshod over minority considerations.

The republican notion of tripartite government was intended to serve as a source of checks against any one branch of government being able to take control of the political process. However, equally important – if not more so – was the expectation that government officials would conduct themselves in accordance with a set of republican moral values involving: Impartiality, objectivity, disinterestedness, independence, honor, fairness, integrity, selflessness, and refraining from being a judge in their own causes.

Article IV, Section 4 of the Constitution entailed both of the foregoing senses of republicanism. However, while many of the details of a tripartite government were spelled out in the Constitution, the moral dimension of republicanism was not elaborated upon within that document even though those moral principles were understood and practiced throughout the colonies in 1787 by anyone who wanted to think of himself as a member of the class of gentlemen that constituted the elite echelon of society from which political leaders would arise.

During the ratification conventions, many participants voiced concerns about potential loopholes they detected in the Constitution that seemed ripe for exploitation. In response to those concerns,

Federalist proponents responded by either pointing out how the checks and balances inherent in the Constitution would be able to handle those sorts of problems, or the pro-Federalist forces indicated that the sense of duty, honor, integrity, and independence of government officials – i.e., their commitment to republican values -- would prevent any sort of exploitation from occurring.

Unfortunately, the fact that the delegates to the Philadelphia Convention had permitted slavery to be incorporated into the text of the Constitution indicated that something was seriously askew with the set of republican values that supposedly characterized the approach to life of some gentlemen and which – at least theoretically – was supposed to protect the proposed system of constitutional governance against abuse, corruption and exploitation. Consequently, from the very beginning, the Framers of the Constitution had shown themselves willing -- in the spirit of compromise -- to sacrifice the welfare of one group of people in order to advance their own interests, and that precedent did not bode well for the future of the Republic.

Another red flag that arose in conjunction with the ability of government leaders to be able to realize the promise of a republican form of government that Article IV, Section 4 of the Constitution was guaranteeing to each state -- and the citizens thereof -- had to do with the conduct of many proponents of Federalism during the process of ratification. More specifically, contrary to the requirements of republican moral values, all too many proponents of Federalism showed themselves willing to try to manipulate ratification delegates as well as to rig the ratification process in as many ways as they could conceive in order to gain victory … and, indeed, without that manipulation and process of rigging the ratification process, one might legitimately question whether the 1787 Constitution would have been ratified at all.

Regrettably, the foregoing behavior has served as an alluring precedent for a great deal of subsequent political manipulation in relation to the American people, and as well, such conduct has served as an early 'how to" case study for rigging the process of governance in America. The foregoing kind of conduct stands in stark contrast to the principles that are inherent in Article IV, Section 4 of the Constitution.

Instead of over-delivering on their constitutional promises and, in the process, setting the stage for politically and legally unpacking the treasures of sovereignty, the Framers over-promised on what they were capable of delivering, and, in the process, set the stage for political devolution. The history of governance in America is a record of the downward process of degeneration -- sometimes gradual, sometimes rapid -- in which the potential of Article IV, Section 4 is continually thwarted and undermined.

As has been pointed out elsewhere in this book, if anyone wishes to argue that Article IV, Section 4 of the Constitution does not refer to republican moral principles such as: Impartiality, disinterestedness, independence, honor, fairness, integrity, honor, selflessness, and refraining from being a judge in one's own cause, and, instead, refers only to purely structural features of government (such as having three branches), then, the Constitution becomes an extremely arbitrary document that lacks the sort of moral constraints that are capable of preventing the purely structural features of a republican form of government from being abused, corrupted, and exploited by those who have acquired power.

Indeed, three branches of government cannot serve as non-arbitrary checks and balances with respect to one another unless the individuals who occupy those branches operate in accordance with a set of common moral values that are capable of constraining arbitrary, self-serving behavior. In other words, if the individuals who are members of Congress, the Executive Branch, and the Judiciary are not committed to values of: "Impartiality, objectivity, integrity, honor, fairness, disinterestedness, independence, selflessness, and a willingness to refrain from being judges in their own causes, then, how will such a system of government be able to avoid making political decisions that are completely arbitrary in nature, -- that is, how will that kind of system of government be able to avoid making decisions that are prone to being based on whim and personal interest rather than rooted in a systematic and principled exploration of any given issue that might be confronting the country?

Why should anyone feel obligated to adhere to a Constitution that is devoid of the very principles that are needed to differentiate between constructive and problematic ways to: Form a more perfect

union; establish justice; ensure domestic tranquility; provide for the common defense; promote the general welfare, and secure the blessings of liberty for ourselves and our posterity? Why should anyone feel obligated to adhere to a Constitution that is completely arbitrary in the way it parses problems and that is not subject to the constraints offered by the sort of guiding principles that are entailed by Article IV, Section 4?

Notwithstanding the purely procedural facets of the Constitution, there are only two precedents that are of value in the entire history of American jurisprudence. Firstly, everything that is done by government must give demonstrable expression to principles of: Impartiality, objectivity, independence, integrity, honor, selflessness, disinterestedness, as well as fairness, and, secondly, the foregoing principles must be actively and concretely applied to a process of advancing and enhancing the principles inherent in the Preamble to the Constitution.

A republican form of governance is rooted in the foregoing two precedents. Everything else that is worthy of being referred to as a precedent either must be capable of being reconciled with those two, aforementioned sets of principles, or those so-called precedents are devoid of constitutional value.

The continuity of governance is dependent on the two previously mentioned precedents being concretely instantiated within the activities of government officials. The source of political and legal obligation arises from a citizen's recognition that the aforementioned officials are sincerely attempting to operate in accordance with the principles inherent in Article IV, Section 4 with respect to the potential present in the Preamble to the Constitution, and in the absence of that sort of recognition, there is nothing – except coercive force – to tie a citizen to the Constitution.

Forms of governance that are rigorously committed to actively applying the foregoing two sets of principles require little use of force or compulsion except in relation to those who insist on operating without: Honor, integrity, impartiality, objectivity, selflessness, and fairness, and, as well, except in relation to those who seek to undermine the ability of society to work toward realizing the two, aforementioned sets of Constitutional principles. On the other hand,

forms of governance that are arbitrary in nature – even if they are referred to as democratic – tend to be immersed in, and preoccupied with, issues of force, compulsion, and oppression.

The rule of law only has value when it is dedicated to advancing and enhancing the sovereignty of every human being within its sphere of influence. The principles of sovereignty outlined in Chapter 2 give expression to a rule of law that is based on applying republican moral principles to the exploration of principles inherent in the Preamble to the Constitution.

Unless the rule of law operates in a manner that assists people to realize their sovereignty in accordance with the moral dimension of a republican form of government and for the purpose of advancing and enhancing the principles inherent in the Preamble to the Constitution, then whatever rule of law that is present will operate in a manner that falls outside of the foregoing considerations, and, as a result, is arbitrary. Furthermore, even if such an arbitrary rule of law is referred to as democratic, it lacks the essence of anything that is worthy of being considered to be truly democratic in nature because any form of so-called democracy that does not advance the cause of sovereignty for its citizens is democratic in name only.

The remainder of this chapter will outline some of the ways in which processes that, ostensibly, are considered to be democratic in nature are, actually, quite arbitrary. Such arbitrary processes – which are only superficially democratic in nature -- will be contrasted with a variety of ideas that are more conducive to promoting the issue of sovereignty in a manner that is consistent with the two sets of principles noted previously that encompass, respectively, a republican form of government and the Preamble to the Constitution.

Elections are considered to be the life-blood of democracy. Yet, many people feel drawn – consciously or unconsciously -- to the following idea: “Don’t vote, it only encourages them.”

Who are the ones who should not be encouraged? Primarily, Democrats and Republicans but, actually, anyone who is involved in party politics should be rebuffed by means of the election process.

Political parties constitute a violation of Article IV, Section 4. A person cannot be an advocate for the philosophy of a given political party while simultaneously also claiming that if elected that individual will operate with: Impartiality, independence, disinterestedness, objectivity, fairness, and, in addition, one will not seek to be a judge in one's own causes.

Like any good scientist or philosopher, someone running for office must begin with as few assumptions as possible, and the assumptions with which one does operate must be demonstrably capable of serving the principles inherent in the Preamble in a selfless manner. Individuals who are to be candidates for public office – whether elected or selected –should be sufficiently free of ideological encumbrances that they can easily move in any number of directions as a function of rigorously engaging in a rational process that is guided by qualities of: Impartiality, independence, objectivity, fairness, honor, integrity, and not serving as a judge in one's own cause.

Unfortunately, democracy in America does not function in the foregoing manner. Instead, the electoral system is rigged in a variety of ways.

For example, by federal law (1975), the members who make up the Federal Election Commission must consist of three Democrats and three Republicans. Which part of the Constitution justifies limiting the membership of the Federal Election Commission to only two parties … or, for that matter, justifies requiring any party affiliation at all?

The Federal Election Commission is supposed to serve as an independent body responsible for regulating campaign finance laws. How can one possibly be independent as long as one's views are – to varying degrees – a function of the philosophy that governs a political party?

By legally requiring the Federal Election Commission membership to consist of an equal number of Republicans and Democrats, one is not regulating campaign finance. Rather, such activity is about controlling what takes place with respect to that Commission in a fashion that meets the approval of Republicans and Democrats.

For instance, according to the Federal Election Campaign Act, the two major parties are eligible -- prior to an election -- for millions of

dollars in public funds that can be used to underwrite the costs associated with primaries, national conventions, and presidential elections. However, third-party candidates are not entitled to have access to public campaign funds until after an election has taken place, and, then, only if that third party has been able to capture five per cent, or higher, of the total vote.

The foregoing requirements place third-party candidates at a tremendous disadvantage. In other words, while the two major parties get to divvy up public funds that, to a considerable degree, will subsidize their political activities prior to an election, third-party candidates must come up with independent sources of funding prior to an election that are unlikely to come close to the amount of money that publically is being made available to the majority parties.

Without access to public funding prior to an election, a third-party candidate is unlikely to be able to capture at least 5% of the vote. Consequently, election campaigning tends to be more expensive (prohibitively so) for third-party candidates unless – and this is an unlikely event – they can manage to match, or exceed, the 5% threshold set by the Republicans and Democrats and, thereby, become eligible to be reimbursed for their campaign expenses (or some of them). In effect, for the most part, the rules of the Federal Election Campaign Act reduce the American election process to a two party monopoly.

The Federal Election Campaign Act and the Federal Election Commission -- which is an amendment of the aforementioned Act – both violate Article IV, Section 4 of the Constitution. They do not constitute impartial, objective, independent, fair ways of organizing and funding political activity … and, in fact, any process that publically subsidizes partisan, political parties or empowers such groups to have control over the election process constitutes a violation of Article IV, Section 4 of the Constitution.

The political biases present in the Federal Election Campaign Act and the Federal Election Commission are further strengthened by means of the Commission on Presidential Debates. This Commission was incorporated in 1987 when the Republican and Democratic parties jointly sponsored the formation of that Commission, and it is funded by a variety of corporations.

The Commission is supposed to be non-partisan and independent. However, the organization is staffed largely by Democrats and Republicans and, consequently, one has difficulty believing that the decisions concerning debates that are made by the Commission are both non-partisan and independent of political interests.

The Commission has prevented third-party candidates – such as Pat Buchanan, Ralph Nader, Jill Stein, and Ron Paul – from participating in Presidential Debates. As a result, the public is exposed to only a limited set of perspectives and will not have the opportunity to consider other possibilities.

The process of redistricting – and gerrymandering is a special form of redistricting – is another way through which the electoral process can be manipulated. State legislative districts and their federal Congressional counterparts are determined every ten years in response to census results.

Ostensibly, whatever changes occur during redistricting should be done only to reflect transitions in population that have taken place over the course of a decade. However, many people in power use that process as an opportunity to draw up districts that confer advantages on their parties by politically diluting or strengthening various segments of the political spectrum in different districts and, thereby, increasing the likelihood that a given party will fare better or worse in forthcoming elections.

Under Article IV, Section 4, the federal government cannot provide a republican form of government if it permits the process of redistricting to be done in a partisan or biased fashion. Although redistricting is done through state legislatures and subject to the approval of the governors in those states, nonetheless, there should be some means of oversight (whether by means of the Judiciary, Congress, the Executive Branch, or some other body) that monitors the redistricting process in order to try to remove as much political influence as possible from that process.

Money is a significant means through which elections are skewed. There is nothing impartial, objective, fair, or honorable about the way in which money determines what does, or doesn't, occur in conjunction with elections.

Consequently, when it comes to elections, the spending or donating of money should not necessarily be a protected form of speech. This is especially the case with respect to corporations since – as has been pointed out previously in this book -- those institutions are not persons but, instead, they are nothing more than organizational permissions that have been granted by one state or another to enable those chartered organizations to engage in certain kinds of activities.

Political activity should never be one of the activities that a chartered organization is entitled to pursue … whether financially or in other ways. For example, to permit a corporation to make contributions to a political party or candidate enables the individuals who control that organization to have an unfair advantage over other individuals because the individuals who control a corporation get to influence elections not only through the activities of the corporation but, as well, through their lives outside of the corporation, whereas individuals who are not affiliated with a corporation – or who have no say with respect to what a corporation does with which they are affiliated – have only one channel of political influence … namely, their own.

Soft money is a form of political contributions that, generally speaking, is raised by corporations such as businesses, political parties, unions, wealthy individuals, or political action committees. Although soft money cannot be given directly to a candidate's campaign, nonetheless, that money can be used to promote a candidate as long as that promotional message does not overtly recommend voting for or against any candidate.

During every election cycle, the airwaves are inundated with the political sounds and sights that are funded by soft money. Since the purpose of that sort of advertising is to induce the public (indirectly rather than directly in order to satisfy the requirements of campaign laws) to vote for, or against (negative advertising), a given candidate, then the intent of much of that advertising – not necessarily all of it -- violates the spirit of Article IV, Section 4 since such material often tends to seek to prevent voters from engaging the electoral process in an impartial, objective, independent, and fair manner so that the voting process reflects demonstrably accurate information rather than propaganda, and, consequently, permitting corporations to attempt to

influence elections through soft money undermines the ability of the federal government to provide a republican form of government to each state.

In Maine – where I live – voters approved a Clean Election Act in 1996. If a candidate refuses to accept private contributions, then the state government will underwrite the costs of that individual's campaign.

All elections in the United States should be governed by some version of a 'clean election law'. On election day, every registered voter has the opportunity to support the candidate of his, her, or their choice, and just because someone has money – or can raise it -- should not entitle that individual to have some means beyond a single vote to be able to influence elections because, in effect, unless one can ascertain that all candidates have access to the same amount of money from the same source (i.e., public funding), then permitting private donations into the election process tends to diminish, if not largely eliminate, the 'one person, one vote' principle since the whole purpose of private campaign contributions is to fund activities that are intended to entrain other individuals to vote in concert with those who have money and, thereby, generate votes that will serve the interests of people with money rather than serve the interests of sovereignty.

Private campaign donations also limit the choices that the public will have on the day that votes are cast – whether in a primary or an actual election. More specifically, individuals who receive campaign contributions are not necessarily those people that will best serve the Constitution – and, therefore, the entire body of citizens – but instead, they are individuals who are more likely to serve the interests of those who are making financial contributions, and, therefore, a variety of potentially worthy candidates might never get to be considered by the public because those individuals lack the funds needed to gain entry into public awareness, and, under those circumstances, private campaign donations tend to reduce electoral choices rather than enhance them and, in addition, campaign donations don't necessarily guarantee that the choices money does provide will best serve the Constitution or citizens.

Despite often promoting itself as the greatest living example of democracy on the face of the planet Earth, America has one of the

world's lowest rates of citizen participation in the electoral process. Some people believe that those who do not actively participate in the political process are not fulfilling their civic responsibilities, and, yet, perhaps, the ones who are not -- and have not-- been observing their civic duties are the individuals who have tried to rig the system to favor only certain groups of people … a process that has been taking place since the Philadelphia Convention of 1787, then promptly carried over into the ratification process that ensued, and, then, spilled over into the succeeding 227-odd years of political history that followed.

Previously discussed topics involving: The Federal Election Campaign Act, the Federal Election Commission, the Commission on Presidential Debates, redistricting, campaign finance laws, and two-party monopoly practices are just a few of the examples that might be cited to explain – at least in part – why the rate of political participation in the United States is consistently low … usually running less than 50 % of the individuals who are eligible to vote. One doesn't have to be a genius to realize that all of the foregoing activities are designed to rig the political system so that only certain groups will be able to control the process of governance, and, consequently, many of those who refrain from becoming involved in political activity do so out of an understanding – however inchoate this might be – that the political process is – and has been -- deeply entangled in a pathology that manifests itself through a desire to control other human beings and deny them the opportunity to realize their own sovereignty

The foregoing pathology is not a recent development. Its seeds were present in the Philadelphia Convention of 1787 (as evidenced by, among other things, the manner in which slavery was permitted to enter into the Constitution) and such a pathology was permitted to develop further during the ratification conventions that followed due to the way those meetings often were surrounded by, and permeated with, a diverse array of manipulative tactics and strategies … mostly – but not entirely – organized by Federalist forces.

Once the Constitution was ratified, the aforementioned pathology not only survived, but it began to flourish in a variety of ways that, to a certain extent, has been chronicled by material that was presented in the previous chapter. As I indicated during that discussion, the

foregoing pathology has been enabled to survive because federal officials from all three branches of government consistently violated the principles entailed by Article IV, Section 4 of the Constitution and, thereby, prevented governance from providing each state – and its citizens – with a republican form of government that rigorously pursued realizing the principles inherent in the Preamble to the Constitution purposes of enhancing the sovereignty of everyone and not just the liberties of a few.

The First Amendment indicates that: "Congress shall make no law … abridging the freedom of speech, or of the press." A distinction is being made between free speech and a free press.

Virtually everyone has the opportunity -- within certain parameters -- to exercise free speech. However, not everyone is necessarily financially able to operate a press, and, therefore, if freedom of the press is not to become a preserve of only those who possess the means to do so and, in the process, be restricted to the ideas and opinions of the wealthy, then, clearly, freedom of the press must be capable of being modulated in certain ways to ensure that such a right serves the interests of all citizens.

While Congress is Constitutionally prohibited from abridging freedom of the press, the wording of the First Amendment does leave some degree of wiggle room for either the Judicial or the Executive branches of government to weigh in on matters involving that form of liberty. Nonetheless, the extent and character of the foregoing sort of intervention is constrained by the Constitution itself because neither Judicial nor Executive activities can violate the requirements of Article IV, Section 4 and, as a result, whatever contributions might be made by the Judicial or Executive branches, those contributions must not only be filtered through qualities of: Impartiality, objectivity, disinterestedness, independence, integrity, and not acting as a judge in one's own cause, but, as well, the aforementioned interventions must be capable of being shown to advance and enhance the realization of principles that are inherent in the Preamble to the Constitution … otherwise those interventions tend to be arbitrary in character and, therefore, unjustified.

During the administration of John Adams, the President used the Alien and Sedition Acts to suppress information – being published mostly by Thomas Jefferson or those who were aligned with him -- that was critical of government policies and actions. When Jefferson became President in 1801, he arranged for a variety of printing contracts – such as in conjunction with the *National Intelligencer* that was operated by Samuel Smith – to promote Jeffersonian ideas and policies and, as well, to counter the Federalist perspective,

Both President Adams and President Jefferson were wrong with respect to the ways in which they engaged the First Amendment. This is because no matter how fervently Adams and Jefferson might have believed that their respective policies were capable of advancing and enhancing the realization of principles inherent in the Preamble, nevertheless, each of those individuals violated Article IV, Section 4 of the Constitution because they were both serving as judges in their own causes, and, in addition, they were not acting in an: Impartial, independent, objective, disinterested, or fair manner.

Furthermore, even if Adams and Jefferson had been complying with the moral requirements of Article IV, Section 4, nonetheless, believing that one is serving to advance and enhance the principles inherent in the Constitution is not the same thing as being able to demonstrate that what one believes is true or justified. Presumably, one of the purposes for having three branches of government is to provide independent sources of confirmation for the viability of any given belief … irrespective of whether a president, the judiciary, or Congress advocates those beliefs.

In order to provide a republican form of government to each state, and the citizens thereof, the officials in all three branches of the Federal government have a duty under Article IV, Section 4 of the Constitution to protect those states and their citizens from invasions … including invasions of ideas that are demonstrably antithetical to realizing the principles inherent in the Preamble to the Constitution. However, one should not interpret the foregoing statement to mean that the federal government has the right to censor speech or the press but, rather, the previous sentence is intended to allude to the idea that the federal government has a duty to ensure that the public arena in

which ideas compete against one another is regulated with: Impartiality, objectivity, independence, fairness, and integrity.

The public has a right to hear, see, and have access to an array of opinions, perspectives, and conceptual possibilities that enjoy roughly equal time and attention relative to the views that are being presented through a press that has been established by those who command the wealth and power to do so. Consequently, in accordance with the requirements of both Article IV, Section 4 of, and the Preamble to, the Constitution, the Federal government should be subsidizing a variety of television stations, radio stations, newspapers, magazines, and books that are capable of competing with the media that are serving the interests of corporations.

Unfortunately, for most of its existence, the Federal government has not only been derelict in its duty with respect to providing a republican form of government in the foregoing sense, but, actually, all three branches of the Federal government have done a great deal to ensure that a corporate perspective has become the dominant framework through which media is engaged in America. As a result, the sovereignty of Americans has been diminished and undermined in a variety of ways.

The conflict-laden dynamic between, on the one hand, the right of the people to be afforded access to accurate information as well as a diversity of opinion concerning an array of issues, and, on the other hand, the desire of commercial interests to control the media in order to be able to serve their own agendas has been in effect for a long time.

For instance, Seth Cotlar provided evidence in his book: *Tom Paine's America: The Rise and Fall of Transatlantic Radicalism in the Early Republic* concerning a newspaper battle that had taken place during the early 1790s that pitted a combination of Federalist, business, and property-rights perspectives against various alternative ideas that championed exploring issues involving sovereignty that raised questions which those with Federalist, business and property-rights inclinations did not want the public to consider or reflect upon.

By the mid-1790s, the foregoing debate had largely disappeared from public view because money flowed into the former side of the discussion rather than into the latter. However, the aforementioned debate didn't end because the Federalist/business/property-rights

side of the interchange necessarily encompassed better ideas than the alternative side did but, instead, alternative points of view disappeared because those who had money and political power were able, in a variety of ways, to prevent those ideas from reaching the public, and when people are denied access to certain kinds of food for thought over a sufficiently long enough period of time, then eventually, people often lose their appetite for those kinds of conceptual foods.

A relatively more recent illustration of the foregoing dynamic -- which pits alternative approaches to the issue of sovereignty against the ideas of those who are proponents of corporate and property-rights -- surfaced in the form of two Supreme Court decisions that were handed down in 1969 and 1974. The first decision involved *Red Lion Broadcasting Co. v. FCC*, while the second decision addressed the *Miami Herald Publishing Co. v. Tornillo* case.

According to the Supreme Court ruling in *Red Lion Broadcasting Co. v. FCC*, the First Amendment gives expression to a social right in which all citizens should have access to a system of radio and television networks that primarily serve the interests of democracy (e.g., a free flow of diverse, quality information) and only secondarily serve commercial interests (profits and corporate agendas). The Supreme Court indicated that part of the trade off for granting certain companies monopoly media licenses required those companies to serve public interests and needs.

On the other hand, in the matter of *Miami Herald Publishing Co. v. Tornillo*, the Supreme Court ruled that a Florida law was unconstitutional which required newspapers to offer political candidates equal space for responding to political editorials and opinions written by the newspaper concerning those candidates. In addition, the Court indicated during the course of its decision that the First Amendment protected the right of newspapers to exercise editorial judgment, and given that newspapers only have a finite amount of space, the Court maintained that requiring newspapers to provide an equal amount of space for political candidates to counter the newspaper's views would have a chilling effect on speech because under those sorts of circumstances, the Court felt the tendency of many newspapers would be to avoid controversial, political issues in

order not to have to be required to provide space to the politicians being criticized.

Although *Red Lion Broadcasting Co. v. FCC* and *Miami Herald Publishing Co. v Tornillo* are often seen as being on the opposite ends of a legal spectrum concerning the media, the two decisions actually appear to be quite compatible with ideas that were expressed several pages earlier in the present section of the current chapter of the book. More specifically, as was affirmed in *Red Lion Broadcasting Co. v. FCC*, freedom of the press is a social right, but in addition – and as the *Miami Herald Publishing Co. v. Tornillo* decision asserted -- exercising editorial judgment should be a protected right under the First Amendment, and, therefore, the American people would be best served if privately owned newspapers had the right to voice their editorial opinions in a Constitutionally regulated context that contained provisions for the opinions of private newspapers to be countered through media outlets that were subsidized – but not controlled – by the federal government.

If exercising editorial judgment constitutes a protected right under the First Amendment in conjunction with commercial-oriented interests, then, the right to exercise editorial judgment should also be a protected right under the First Amendment for other, less wealthy citizens as well. Moreover, since – as is the case with private newspapers -- the space in government subsidized media outlets is finite in character, then not all citizens will necessarily be able to express their editorial opinion within such a context, but, nevertheless, steps could be taken to ensure that a representative array of alternative editorial opinions are provided to the public as a means of countering, to some extent, the influence of privately owned media outlets and, thereby, enhancing people's sovereignty.

Unfortunately, for the most part, the history of media in the United States has not been characterized by concerns about sovereignty but, instead, that history has been regulated largely in accordance with commercial interests. For example, consider the following information.

During the early part of the 1920s, there were many nonprofit organizations engaged in radio broadcasting. The idea of using radio

as a means through which to generate advertising profits had not, yet, taken hold.

However, because there were so many groups and individuals that either were, or wanted to become involved in, radio broadcasting, the airwaves were becoming overly crowded. Consequently, the Radio Act of 1927 created the Federal Radio Commission in order to regulate broadcasting.

Although the FRC had been authorized to award broadcast licenses for the purpose of serving – in some undefined fashion – the 'public interest,' nonetheless, very quickly, the process of awarding licenses soon began to be controlled by commercial interests. For example, in the late 1920s, CBS and NBC started to exploit the potential of broadcasting to generate advertising revenues, and, as a result, those companies not only induced the FRC to assign the best wavelengths to CBS and NBC affiliates, but, as well, under the influence of companies like CBS and NBC, the FRC began to operate according to a model that considered advertising to be the preferred – if not only -- means of subsidizing the process of broadcasting.

In the mid-1920s, nonprofit groups were responsible for approximately 50% of radio broadcasts. Ten years later there were relatively few nonprofit broadcasters still operating, and the foregoing transition occurred in large part because the FRC – despite its Congressionally mandated purpose to serve the 'pubic interest -- had permitted commercial interests to shape the activities of that government agency.

The Radio Act of 1927 was replaced with the Communications Act of 1934. Just as the FRC had been established through the 1927 legislation, the Federal Communications Commission (FCC) came into being through the 1934 legislation.

Between 1927 and 1934, a rigorous debate had arisen concerning use of the airwaves. On one side of the debate were commercial interests -- represented by the National Association of Broadcasters – which not only argued that radio broadcasting should be limited to commercially oriented operations but doing so was an inherently democratic thing to do, while on the other side of the debate were an array of educational, journalistic, religious, agricultural, labor, and women's groups which maintained that the United States should

follow the example of the CBC in Canada or the BBC in England and make room for government subsidized, non-commercial forms of broadcasting.

On Capital Hill, the financial and political clout of the National Association of Broadcasters overwhelmed the non-commercial groups aligned against it. Moreover, in 1933 – the year before the Communications Act of 1934 was passed -- the NAB negotiated an agreement with the American Newspaper Publishers Association in which the members of the NAB would refrain from reporting the news if the NPA would refrain from using their pages to support groups that were interested in non-commercial uses of radio, and, as a result, the NAB and NPA were able to frame the broadcasting issue for Congress in a way that favored a commercial, profit-based perspective.

Once the Communications Act of 1934 was enacted, the National Association of Broadcasters proceeded to characterize any attempt by the federal government to limit or restrain corporate control of radio broadcasting as an assault on the First Amendment rights of those broadcasters. Such characterizations exhibited considerable chutzpah since the members of the NAB were being granted licenses that cost those companies nothing while simultaneously denying non-commercial groups their own First Amendment Rights … and, in addition – as has been argued elsewhere in this book -- commercial corporations are not persons in any non-arbitrary sense and, therefore, are not entitled to First Amendment rights.

The pro-commercial orientation through which the FCC regulated radio broadcasting became the template for regulating subsequent media technologies involving: Television, FM radio, shortwave, cable, and microwave forms of transmission. Yet, from its inception the FCC was operating – and continues to operate – in violation of Article IV, Section 4 of the Constitution because the federal officials who are responsible for operating that agency have often not been conducting themselves in accordance with a republican form of government because in view of the manner in which many officials at the FCC have adopted a favorable bias toward commercial uses of the airwaves, their policies often have not been formulated with: Impartiality, independence, objectivity, integrity, or fairness.

To reference just a single aspect of the foregoing problem, one might consider the case of Charles Denny … a former chairman of the FCC during the mid-1940s when television was beginning to acquire a higher profile on the media landscape. More specifically, chairman, Denny ignored the requirements of Article IV, Section 4 of the Constitution and proceeded to devise a policy that awarded monopoly control of the television industry to CBS and NBC, and, then, less than a year later, was rewarded for his corporate favoritism by being provided with an executive position at NBC that tripled his government salary.

The foregoing example illustrates how the FCC – as is true of many government agencies (although there are exceptions to this general trend) – tends to be what is referred to as a "captured" regulatory body. In other words, FCC policy is often formulated by, and enacted for the benefit of, those companies that the FCC is supposed to regulate, and, as is true in relation to many other governmental regulatory agencies, there is a revolving door linking the government agency with the industry that the government agency is supposed to regulate through which individuals – like the aforementioned Chairman, Charles Denny -- go from, for example, the FCC to lucrative jobs in the media industry, or individuals from private industry become Commissioners and Chairmen of the FCC and use their government positions to maintain or increase the control of corporations over the activities of the FCC.

From time to time – depending on who the people are that are serving as Commissioners, as well as who occupies the office of Chairman – the FCC does seek to place constraints on commercial use of the airwaves. For example, in 1975, companies were not simultaneously permitted to own both a daily newspaper as well as have a broadcast license within the same market, and, in addition, broadcast companies could not possess monopoly cable rights for a given market while also owning a television station in that same market.

Yet, 14 years later, in 1989, just 23 corporations controlled most of the media in the United States. By the year 2000, the foregoing 23 companies had been whittled down to eight organizations.

Today there are five conglomerates that control the vast majority of media that exists in the United States (encompassing movies, television, radio, magazines, books, newspapers and much of the news content that is accessed through the Internet). Those organizations are: The News Corporation -- overseen by Rupert Murdoch; Spectrum (formerly Time Warner); Viacom (formerly CBS), Disney, and the German corporation Bertelsmann.

In addition to the aforementioned companies, there also are several corporations – notably Knight-Ridder and Gannett – that control approximately 80% of the newspapers circulating in the United States. As a result, just 2% of the newspaper markets in the United States offer consumers choices involving alternative and independent sources of news and opinions.

Aside from the aforementioned five conglomerates that control much of the media in the United States, Viacom now controls NBC (previously owned by General Electric). NBC is one of the four major television behemoths that have been permitted by the federal government to usurp the airwaves for corporate purposes.

If an individual were to try to broadcast on a wavelength that has been assigned to a media corporation, that individual would be subject to prosecution. Yet, corporations are permitted to broadcast at specified wavelengths without having to reimburse the American public for being granted monopoly access to the air through which electronic signals are transmitted despite the fact that the air – and its capacity to carry electronic signals – is part of the commons to which everyone ought to have equal access and be able to use.

Some people claim that the present arrangement in which only a handful of corporations have emerged to control the vast majority of media-oriented services in the United States is a natural outgrowth of a free-market system that has evolved over-time through the process of competition. However, there is nothing very competitive about the federal government assigning monopoly licenses (e.g., in conjunction with radio and television) to some individuals and not others, and, furthermore, there is nothing very free about the manner in which the federal government intervenes in the marketplace in order to place constraints on commerce in conjunction with, for example, copyrights and patents, as well as by establishing a judicial system that enables

those with more wealth to take greater advantage of such a system by being able to exploit to their advantage a variety of issues surrounding matters of copyrights and patents.

Many, if not most, media companies could not have survived without the foregoing sorts of government intervention. Moreover, many of the mergers and acquisitions that have led to virtual monopoly-like control in various sectors of the media are not based on free-market economics but, instead, are, to a considerable extent, a function of government-supported economics.

To add insult to injury, the corporations that control the media are not necessarily interested in transmitting the truth. They are primarily interested in maximizing their Return On Investment, and, therefore, whenever necessary (and this is often considered to be necessary), they are prepared to sacrifice the truth in order to enhance, or protect, their financial bottom line.

Furthermore, for the most part, the foregoing organizations are not in the habit of promoting material that is critical of corporate: Practices, agendas, and values. Occasionally, those sorts of businesses might permit alternative viewpoints to surface into the public arena, but these are exceptions to the rule that enable those companies, on the one hand, to claim that they do not engage in the process of censorship even while, on the other hand, the vast majority of what sees the light of day in the media is compatible with, or can be tolerated by, the corporate interests that control that media.

Thus, the corporate controlled media gives very little attention to the existence of white-collar crime even though such crime is far more deadly, costly, and destructive – by many orders of magnitude -- than is street crime. Similarly, the corporate controlled media offers little, or no, insight into the manner in which nuclear, oil, and gas conglomerates have fought tooth and nail to prevent alternative and renewable forms of energy from being able to reach the public, nor does the corporate controlled media spend much time elaborating on the manner in which a variety of financial institutions, in conjunction with predatory forms of capitalistic ideology, are responsible for a great deal of the unemployment, inflation, and poverty that has occurred in America over the last 227-plus years.

The foregoing strategy illustrates the principle that information which can be communicated multiple times a day, many times a week (and which tends to sing the praises of corporate activity), is far more likely to be remembered and, as a result, possess a greater capacity to shape public opinion in powerful ways than will information concerning the dark side of corporate activity -- which is considerable -- that is presented only occasionally, if at all. In other words, media conglomerates get to frame a wide variety of issues and problems by selectively promoting the ideas, perspectives, "facts", principles, news, opinions, and personalities that they consider will best serve their short-term and long-term purposes.

In 1996, the Telecommunications Act was passed by Congress and signed into law by Bill Clinton. The legislation reformatted the rules that were to regulate media involving: Television, radio, cable, phones, the Internet, and satellite communication.

There was no debate on the floor of Congress concerning the essential features of the foregoing legislation. Many members of Congress voted on the bill out of ignorance which is not the same thing as engaging that piece of legislation through qualities of: Impartiality, objectivity, independence, integrity, selflessness, and fairness, and as a result, those members of Congress violated Article IV, Section 4 of the Constitution when they voted in favor of that Act.

The Telecommunications Act was supposed to bring free markets and new technologies together in a manner that would jettison much of the regulatory principles that allegedly had been shaping government policy previously. The working theory underlying the 1996 legislation was that free market competition – rather than the government – could better regulate what transpired within the media industry, and that the primary role for government in conjunction with the media should be one of protecting the interests of corporate property.

Supposedly, the intent of the foregoing legislation was to provide consumers with a greater array of choices, as well as to lower the costs of phone and cable services. However, more often than not, that Act has resulted in higher costs for phone and cable services.

Furthermore, while consumers might have been provided with more choices, many of those choices have little value to the consumer.

For instance, consumers are provided with several hundred channels of television viewing from which to select, even though – at best – merely 15-20 of those options might be of interest to the majority of consumers, and consequently, while consumers are given more choices, nonetheless, most of the choices available to them – and for which they are paying -- are unwanted.

During the three-plus decades that have passed since the Telecommunications Act was enacted in 1996, there have been in excess of a thousand mergers that have taken place in conjunction with radio stations. As a result, more than half of the nation's 10,000-plus radio operations are controlled by a relatively small number of corporations, and, therefore, listeners tend to be exposed to a fairly limited array of choices with respect to the conceptual possibilities and political opinions that are being made available to them.

The federal government has permitted the communications industry to be taken over by corporations that have little interest in assisting the vast majority of citizens to realize the actual principles that are inherent in the Preamble to the Constitution. Instead, those organizations want to restrict the meaning of ideas -- such as: 'Establishing justice', 'ensuring domestic tranquility', 'providing for the common defense', 'promoting the general welfare', and 'securing the blessings of liberty' -- in ways that serve corporations rather than citizens.

Thus, the idea of "establishing justice" becomes a function of the sort of substantive due process that allows corporations to illicitly exploit the 14th Amendment. Or, the notion of "ensuring domestic tranquility" is code for inducing Congress, the Executive branch, and the federal courts to oppress workers in a variety of ways – ranging from: Inadequate wages and health care, to: Being forced to work in hazardous and unhealthy working conditions. Or, the concept of "providing for the common defense" is interpreted to mean the 'right' of corporations to be able to call upon the military to advance and protect the interests of such businesses around the world and, if necessary (and it is almost always necessary to do so), to start wars in order to accomplish those goals. Or, the principle of "promoting the general welfare" is understood to be synonymous with corporate welfare (often in the form of government subsidies and tax

concessions), and, finally, the idea of "securing the blessings of liberty" tends to translate into the Potomac two-step in which the revolving door linking the federal government with the corporate world increases the capacity of corporations to have greater degrees of freedom through which to control what goes on politically, economically, financially, legally, educationally, environmentally, and medically.

By permitting a very limited number of corporate conglomerates to acquire control of the media rather than taking measures to ensure that responsibility for developing alternative modes of communication opportunities are distributed across, and get contributions from, a broader spectrum of the population, all three braches of the federal government have violated the principles inherent in Article IV, section again and again. Enabling a small set of corporate conglomerates (even the 23 corporations that controlled the media in 1989 are too few but far better than the situation that exists at the present time) to gain a stranglehold on the nature of the information that flows through America, tends to be antithetical to realizing the purposes set forth in the Preamble to the Constitution because those purposes will be filtered through, and framed by, the interests of the corporate entitles that control the flow of information to the general population.

Furthermore, one has difficulty reconciling alleged qualities of: Impartiality, objectivity, disinterestedness, integrity, fairness, honor, and selflessness that should be present in federal officials with the tendency of those same individuals to make decisions concerning the media that consistently come down on the side of corporate interests. While commercializing the media might lead, among other things, to various efficiencies and economies of scale, nonetheless, there also often is considerable collateral damage inflicted on the quality and diversity of information that is force-fit into a profit-driven business model that is intended to serve the interests of corporations rather than people.

More than 80 years ago, Smedley Butler – a two-time recipient of the Medal of Honor and, at the time of his death, the most decorated man in U.S. military history – had warned America that war is a racket sponsored by business interests. Based on his own decades of military

experience in Latin America, the Caribbean, and the Philippines, Butler was a first-hand witness to the fact that wars were rarely, if ever, about righting wrongs or defending democracy but were, instead, initiated for the purposes of advancing the interests of businesses at the expense of common people … both foreign and domestic.

Thanks, in part, to a corporate-dominated media, relatively few people are aware that Butler voiced the aforementioned concerns nearly a century ago. Furthermore, thanks, in part, to a corporate-dominated media, even fewer people are aware today that in the 1930s Butler claimed that he had been approached by a variety of business interests that sought his participation in a plot to overthrow the United States government and that when Butler reported the foregoing plot to the government before several Congressional Committees, such was the influence of the corporate and business world upon the members of government and the news media that no one seemed to be interested in pursuing the matter … and in the case of federal officials, the foregoing sort of reluctance constituted a clear violation of their duties under Article IV, Section 4 of the Constitution.

A little over a quarter of a century later, Dwight Eisenhower – another military hero – gave his farewell speech as President and voiced yet a further warning concerning the dark side of the military and its connection to the world of business. He stated:

"This conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence – economic, political, even spiritual – is felt in every city, every Statehouse, every office of the Federal government. We recognize the imperative need for this development. Yet we must not fail to comprehend its grave implications. Our toil, resources, and livelihood are all involved; so is the very structure of our society.

"In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist.

"We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with

our peaceful methods and goals, so that security and liberty may prosper together."

The military-industrial complex does not consist of just the military and its corporate contractors. That complex also encompasses a variety of intelligence agencies … especially the operational arm of the CIA that specializes in: Assassination, engaging in extreme rendition and enhanced interrogation (i.e., torture), destabilizing governments, rigging elections, running drug operations, training "death squads", and working with corrupt, foreign leaders to oppress their people in order to protect corporate interests.

The operational facet of the CIA is distinct from its analytical aspect. The latter dimension of the CIA gives expression to the primary reason for having created that agency on September 18, 1947 (via the National Security Act).

More specifically, four of the five tasks that were assigned to the CIA through the National Security Act involved gathering, analyzing, and distributing information that might be relevant to formulating and conducting government policy. The fifth function of the CIA was vaguely worded and referred to intelligence activities that might bear upon national security, and from that function, an array of clandestine activities ensued that more often than not have violated both Article IV, Section 4 of the Constitution and, as well, tended to subvert the principles inherent in the Preamble to the Constitution.

The Central Intelligence Act of 1949 pushed the organization deeper into secrecy and, as such, that Act often undermines the ability of the government to provide a republican form of government to each of the states and their citizens. At the very least, accountability of any kind becomes something of a will-o'-the-wisp … in fact, Congress did not acquire any oversight of the CIA's activities – limited though such oversight might be -- until the mid-1970s when the findings of the Church Committee led to the Foreign Intelligence Surveillance Act of 1978 and the establishment of intelligence oversight committees in both the House and the Senate.

Within a relatively short period of time after the CIA's inception, the operational branch of that agency began to assume dominance. By the mid-1960s, the highly secretive, lethal, intervening side of the CIA was consuming more than two-thirds of the billions of dollars a year

that were being funneled to the agency through Congressional budgets … and, as the Church Committee discovered, one can fund a lot of mischief unconstitutional activities with billions of dollars at one's disposal.

Although Gerald Ford established the President's Intelligence Oversight Board as a means of reviewing the activities of the CIA with respect to possible instances of unconstitutional behavior, and while Ronald Reagan provided that group with permanent status, nonetheless, there was very little actual oversight exercised by the board. For example, throughout the administration of George W. Bush, the aforementioned agency failed to question, examine, or report on any of the activities of the CIA despite the fact that the latter organization was often deeply mired in constitutionally questionable activities.

Many of the operational actions of the CIA, as well as the lack of activity exhibited by the President's Intelligence Oversight Board, have violated Article IV, Section 4 of the Constitution. In other words, the conduct of many of the members of both of the foregoing agencies often tends to be devoid of qualities such as: Impartiality, objectivity, integrity, honor, and fairness that are necessary if the federal government is going to be able to provide each of the states – and the citizens thereof – with a republican form of government that is capable of helping people to realize the principles inherent in the Preamble and, thereby, to enhance the sovereignty of American citizens.

Few people heeded Smedley Butler's previously noted warnings concerning the nature of the relationship between the military and business. Furthermore, while Eisenhower's phrase: "military-industrial complex" – which resonates with the earlier words of Smedley Butler indicating that war is a racket – has become well known, nonetheless, for the most part, the significance of Eisenhower's words – like those of Butler before him – have, in many respects, been swept to the sidelines of history.

Since the end of World War II the United States military and various intelligence agencies have joined forces with corporations at the direction of officials in the Federal government to engage in an array of hostile activities (e.g., regime change, assassination, subversion, invasion, bombing) against countries that have not

attacked America. All of the ensuing instances were instigated without any formal declaration of war being passed by Congress: China, 1945-1949; Greece, 1947-1949; Philippines, 1945-1953; South Korea, 1945-1953; Palestine, 1947 to the present; Albania, 1949-1953; China, 1950-1953; Iran, 1953; Guatemala, 1953 through the 1990s; Indonesia, 1957-1958; British Guiana, 1953-1964; Vietnam, 1950-1973; Cambodia, 1955-1973; Cuba, 1959-2015; The Congo/Zaire, 1960-1965; Brazil, 1961-1964; Dominican Republic, 1963-1966; Laos, 1964-1973; Indonesia, 1965; Chile, 1964-1967; Greece, 1964-1974; East Timor, 1975-present; Nicaragua, 1978-1989; Grenada, 1979-1984; Libya, 1981-1989; Panama, 1989; Iraq – throughout the 1990s; Afghanistan, 1979-1992 ('Charlie Wilson's War'); El Salvador, 1980-1992; Haiti, 1987-1994; Yugoslavia, 1999; Afghanistan, 2001 to the present; Yemen, 2002; Philippines 2002-2013; Columbia, 2003 -2015; Iraq, 2003-present; Liberia, 2003; Haiti, 2004-2005; Pakistan, 2005-present; Somalia, 2006-present; Syria 2008-present; Yemen, 2009 and 2013-present; Libya, 2011-present.

The foregoing examples constitute a subset of a much longer list of hostilities initiated by the United States. For instance, the Federation of American Scientists has identified more than 200 occasions between 1945 and 2001 in which American forces either initiated or engaged in hostilities against foreign countries.

Not even one of the foregoing 200 incidents involving American military forces led to the establishment of democracy as a result of those interventions. On the other hand, millions of people died, were wounded, or became refugees as a result of those hostilities.

Furthermore, none of the foregoing countries landed troops on American soil or bombed American cities. Instead, the foregoing conflicts arose as a function of the assistance being given by the United States to those (whether in the form of corrupt, foreign officials or corporations) that sought to undermine, or prevent, common people from gaining, or reclaiming, their sovereignty.

The United States military-industrial complex has aided and abetted a menagerie of brutal dictators or insurgents who have sought to make things safe for American corporations as those companies have been enabled by the reality -- or threat -- of military force to be able to exploit the resources and people of numerous countries around

the world. Smedley Butler's experienced-based, 1935 assertion that war is a racket conducted on behalf of business remains highly relevant more than 80 years later … as relevant as the words of Dwight Eisenhower concerning the military-industrial complex that were spoken on January 17, 1961.

According to multiple editions of the *Base Structure Report* that is issued each year by the Department of Defense, the Pentagon rents or owns over 700 bases that are distributed across approximately 151 countries (out of a total of 196 nations). There are more than a half a million uniformed personnel (including ships at sea) that service the foregoing bases at a cost – both for the bases and the personnel – that runs into the hundreds of billions of dollars.

The base-totals indicated in the aforementioned Defense Department reports are not necessarily complete because there are a variety of American bases, outposts, and garrisons in places such as: Kyrgyzstan, Uzbekistan, Afghanistan, Qatar, Iraq, Jordan, Israel, and Kuwait that -- for a variety of reasons (usually having to do with secrecy and political sensitivities of one kind or another) -- don't always appear in those documents. In addition, there are billions of dollars worth of military and intelligence supplies that are housed at locations in Britain that are referred to as Royal Air Force bases but have a strong American presence.

There are more than 4,000 military bases that are located in the United States or its territories. The costs associated with building, maintaining, and staffing these latter installations amounts to three or four times the hundreds of billions of dollars that are required to build, maintain, and staff overseas bases.

The foregoing military operations – both domestic and foreign – are not about defending America against attack. For example, if the "official" narrative concerning 9/11 is to believed -- and there are many reasons not to accept that narrative (e.g., see *The Essence of September 11th*, *2nd Edition and Framing 9/11*) – then, despite a variety of governmental obfuscations (such as *The 9/11 Commission Report* and a series of evidentially and analytically challenged reports from NIST – National Institute of Standards and Technology) the military failed miserably to defend America on September 11, 2001.

Instead, the collective military operations of the United States are directed toward exercising hegemony or control over the rest of the world. The foregoing bases, personnel, and costs are concerned with establishing and maintaining empire rather than being dedicated to helping Americans to realize sovereignty. Indeed, if the American government actually had been interested in enhancing and advancing the cause of sovereignty for individual Americans, then the trillions of dollars that have been spent subsidizing military adventurism on behalf of corporations over the last seventy years would have been allocated far more efficaciously if that money had been invested in projects such as: A single-payer health care system, universal higher education, and revitalizing the crumbling domestic infrastructure of America.

Another indication that the U. S. military is engaged in hegemony and empire building involves the draconian and self-serving Status of Forces Agreements (SOFA) that America imposes on the countries in which it establishes bases. Among other things, the foregoing SOFA arrangements absolve the military forces that are based in foreign lands from being held liable by those countries in conjunction with criminal acts, environmental damage, or atrocities that are perpetrated by American forces while stationed in those nations.

If American military forces were really concerned about the issue of sovereignty, then, steps would be taken to ensure that everything they did in other countries – including the Status of Forces Agreements -- served the interests of all of the citizens in those countries. Unfortunately, most of what the military does in – and to -- those countries is for the benefit of the few (the military) and at the expense of the many (the people in 150 other countries).

Furthermore, if defense were really the motivating purpose of the United States military, then there would be no need to establish and maintain hundreds of bases around the world. For example, the U.S. Navy has the ability to deploy 11 task force groups (and each group contains a nuclear-powered aircraft carrier) that are fully capable of protecting America from attack, as are the 4,000-plus land bases in the United States.

Then, of course, there are a variety of questions one might ask about the extent to which the military's policies concerning the use of

nuclear weapons can be said to actually defend Americans. For example, some 8,000 nuclear strategic weapons and 22,000 tactical nuclear weapons have been manufactured by the United States, yet, if even a small sub-set of those weapons were leashed upon other countries and even if no nuclear detonations occurred in the United States as a result of retaliatory responses to those strikes, nonetheless, Americans stand a very good chance of being adversely affected from not only the fallout generated through the denotation of the aforementioned nuclear explosions in foreign lands, but, as well, Americans very likely would be adversely affected as a result of the manner in which those foreign nuclear explosions might lead to significant disruptions in the world economy and agricultural production.

On the other hand, if the countries being attacked managed to release their own nuclear weapons in response to the actions of the American military, then, the lives of millions of Americans could be lost both directly through nuclear detonation and, as well, through the destruction of our domestic infrastructure that would give rise, among other things, to starvation and disease. Moreover, everyone – on all sides – loses if the exchange of weapons leads to nuclear winter.

Nuclear weapons do not provide for the common defense. Rather, they make possible our common demise, and, unfortunately, currently there are so-called strategic thinkers in the military who believe (based on speculation and game theory … with the emphasis on 'speculation', 'games,' and 'theory') that the United States could win a nuclear war … although one might question the meaning of the term "win" under those circumstances.

In the world of conventional weapons, thousands of American military personnel have been killed and millions of foreign nationals have died (many, if not most, of the latter individuals are innocent of any wrong-doing). In addition, millions more foreign nationals have been wounded, millions of refugees have been displaced, trillions of dollars have been spent, millions of unexploded landmines lie buried in a variety of countries, and tons of depleted uranium are poisoning both people and lands (Depleted uranium consists of Uranium 238 which is a waste residue emanating from nuclear reactors that is being used in the manufacture of many different kinds of munitions not only

because depleted uranium is over one and a half times more dense than lead, but also because those munitions have the capacity to become candescent and burrow through metal … furthermore, munitions containing depleted uranium have radiological properties that can compromise biological systems that are exposed to them and, as a result, can continue to cause harm long after those munitions have been fired.).

Yet, despite all the foregoing kinds of devastation, the world has not become a safer, more stable place. In fact, if anything, the world has become less safe and less stable as a direct result of the way in which the United States military (in conjunction with an assortment of intelligence agencies) has recklessly invaded, bombed, subverted, terrorized, and oppressed many parts of the world by means of the operations that are being run out of the bases it maintains in more than 150 countries.

Almost nothing that the U.S. military has done over the last 70 years has furthered the cause of peace, democracy, or sovereignty either in relation to the citizens of the United States or with respect to the citizens of other countries. Indeed, there is little, or nothing, of constructive value that the military-industrial complex has to show for its efforts that can justify the damage, casualties, chaos, and costs that have emerged as a result of U.S. military activities around the world over the last seven decades … except, perhaps, in conjunction with the bottom lines of corporations that have been engorged as a result of the foregoing policies that encourage destruction, mayhem, and carnage.

The mind-set of many U.S. military leaders seems to be akin to the perspective given expression by former Secretary of State Madeline Albright during a 1996 *60 Minutes* interview, and later echoed by Bill Richardson, a former member of Bill Clinton's cabinet, in conjunction with his appearance on the television program *Democracy Now*. When each of the foregoing individuals was asked whether -- in light of the fact that 500,000 Iraqi children had died as a direct, or indirect, result of that invasion -- they felt that the invasion of Iraq by the United States had been worth it, both Albright and Richardson said that despite those sorts of costs, they thought that the invasion had been worth it.

Yet, neither one of those two individuals proceeded to expound on the nature of the moral calculus that justified drawing the conclusion they did. Similarly, despite the fact that over the last 70 years U.S. military leaders (and their civilian enablers) have let loose the dogs of war upon the world again and again, one has difficulty understanding how any of those leaders might be able to justifiably reconcile the death, destruction, costs, and turmoil that their decisions have generated with the miniscule positive results – if any such results can be determinately and demonstrably established -- that might have occurred in conjunction with their decisions and actions.

Both military leaders and their civilian enablers are bound by the requirements of Article IV, Section 4. They each – in his, her, or their own way -- must provide a republican form of government to the states (and the citizens thereof) by exhibiting qualities of: Impartiality, objectivity, integrity, honor, fairness, and so on, and, yet, on what basis can government and military officials claim to be impartial, honorable, fair, and acting with integrity when they bomb innocent people, or destroy the infrastructure of the latter's country, or poison the lands being invaded with depleted uranium, or deprive innocent people of food and medicine by imposing sanctions, or torture those individuals in order to force them to pay for the alleged sins of their overlords?

In many instances, the federal government and its military are guilty of committing war crimes. For example, when innocent people are bombed, tortured, and starved to death for merely living in the same country as the foreign leaders to whom the military-industrial complex is opposed, then, this constitutes a collective form of punishment or reprisal in which innocent people become surrogates for those who are on the enemies list of the federal government, and, as such, this constitutes a war crime.

To say that: "War is Hell" doesn't resolve the foregoing problem. One has to be able to justify inflicting Hell on innocent people, and neither military leaders nor their civilian enablers are capable of putting forth a justification that is capable of viably defending what they have done or are doing.

Over at least the last seven decades – and, very likely, for a much longer period of time -- military leaders and their civilian enablers in America have consistently violated the provisions of Article IV, Section

4 of the Constitution by failing to exercise the qualities of: Impartiality, objectivity, disinterestedness, independence, integrity, honor, as well as by refraining from being a judge in their own cause in a manner that is capable of demonstrably justifying the decisions they have made to wreak havoc upon, and destroy the lives of millions of people who neither attacked the United States nor had any intention (capable of being rigorously demonstrated) of attacking the United States. Moreover, by violating Article IV, Section 4 of the Constitution in the foregoing way, military leaders and their civilian enablers also have betrayed the principles inherent in the Preamble to the Constitution because those individuals cannot plausibly demonstrate – in a non-arbitrary manner -- that their destructive, lethal, militaristic actions have been able to enhance and advance the foregoing Constitutional principles more effectively than might have been possible if the money used to subsidize armed conflict had been used, instead, to subsidize the sovereignty of people in the United States by means of an array of: Healthcare, educational, and domestic infrastructure programs that are capable of constructively contributing to the lives of people in a direct, concrete fashion.

Almost invariably when federal officials mention the notion of 'national interests' as the reason for conducing themselves in a certain manner, they are referring to scenarios that involve protecting the material, economic and financial properties of various individuals and corporations that are ensconced within the military-industrial complex. Nonetheless, the only defensible version of 'national interests' is one in which the principles inherent in the Preamble to the Constitution are engaged through a republican form of government such that qualities of: Impartiality, objectivity, independence, integrity, and fairness ensure that the sovereignty of the people considered as a whole is enhanced and advanced, as well as ensure that the activities of corporations constructively contribute to the realization of the foregoing sort of sovereignty.

To a hammer, everything looks like a nail, and to the military-industrial complex, everything looks like a matter of national security. Year after year, the federal budget allocates more discretionary spending for the military than that budget assigns to all non-military domestic programs, and, yet, if the federal government's addiction to

military spending could be significantly curtailed (by, among other things, eliminating all oversea bases), then domestic issues involving hunger, poverty, and health care might be better addressed … indeed, making the world safe for corporate exploitation of the world's resources does nothing to help, for example, the tens of millions of poor people in America who are sick, hungry, homeless, or unemployed … or who suffer all four indignities at the same time.

In fact, a fair amount of evidence is available which shows that a differential exists between the number of jobs that can be created through military spending and the number of jobs that can be generated through non-military spending. For instance, if one were to spend a billion dollars on the military, this might lead to the creation of 20-25,000 jobs, and, yet, if one were to take that same amount of money and spend it on civilian projects, one could almost double the number of jobs created in areas such as education and health care.

Furthermore, if the federal government were to reduce, by just a few, the number of new, high-tech jet fighters that are ordered, it could subsidize a program of modernizing mass transportation for many major cities. Or, if the federal government had reduced – by just half -- the trillions of dollars that have been spent on nuclear weapons over the last 70 years and re-purposed those funds to non-military projects, a great deal might have been accomplished in areas involving: Domestic job programs, education, alternative forms of energy, and environmental renewal.

In other words, increasing employment among the general population has the potential to serve as a far better means through which stability – and, therefore, security – can be enhanced than can be accomplished by the military. Consequently, military solutions are not necessarily the only way to provide for the common defense.

In 1953, Eisenhower gave a speech in which he asserted:

"Every gun that is made, every warship launched, every rocket fired signifies, in the final sense, a theft from those who hunger and are not fed, those who are cold and are not clothed. This world in arms is not spending money alone. It is spending the sweat of its laborers, the genius of its scientists, the hopes of its children. The cost of one modern heavy bomber is this: A modern brick school in more than 30 cities. It is two electric power plants, each serving a town of 60,000

population. It is two fine, fully equipped hospitals. It is some fifty miles of concrete pavement. We pay for a single fighter plane with a half million bushels of wheat. We pay for a single destroyer with new homes that could have housed more than 8,000 people."

The military-industrial complex has been committing theft in the foregoing sense for many decades. The United States would be a more secure and safer place if it were to follow Eisenhower's foregoing suggestions and take the money that is being lavished upon the military-industrial complex and, instead, direct those funds toward: Feeding, housing, educating, and healing the American people.

There is a direct link between the foregoing excerpt from Eisenhower's 1953 speech – given early in his first Presidential term – and his words concerning the military-industrial complex that were voiced in his farewell address eight years later in 1961. More specifically, the first speech referred to earlier provided an outline of what needed to be done – namely, to repurpose military spending in order to improve American society -- whereas his farewell speech – rooted in his eight years of experience as President -- identified the forces that were stealing the aforementioned opportunity for improvement from the American people by entangling America in unnecessary hostilities and military spending.

Eisenhower, however, bears a certain amount of responsibility for enabling the foregoing process of theft and, as a result, thwarting the promise contained in the words of his aforementioned 1953 speech. Throughout his eight years in office, he became increasingly aware of the presence of the military-industrial complex and its devastating impact on the pursuit of real sovereignty on behalf of the American people and, yet, Eisenhower did little or nothing about the problem until his farewell speech in 1961.

All three branches of the federal government have been derelict in their obligation to provide each of the states with a republican form of government. This becomes very evident when one analyzes the manner in which, again and again, those branches – each in its own way -- subsidize and favor the machinations of the military-industrial complex while undermining the sovereignty of the American people in the process, and, therefore, they fail to engage a variety of domestic

and international issues through the qualities of: Impartiality, objectivity, fairness, integrity, independence and so on.

For example, the United States is one of the leading – if not the leading -- arms merchants in the world. Since much of the foreign aid that America gives to other countries assumes the form of military equipment and assistance, the American people end up subsidizing the arms industry and defense contractors to the tune of billions of dollars each year … such money might be used more judiciously if it were spent providing domestic aid to the American people.

Furthermore, every year, tens of billions of dollars that are associated with military spending go missing in action (and, on occasion – e.g., 2001 and 2016 -- trillions of dollars have gone missing). That money has not merely evaporated but, instead, someone – or a collection of someone's – is (are) the recipient(s) of those funds, and it seems odd that a government that was sufficiently sophisticated to send men to the moon seems incapable of accurately accounting for the money that has been entrusted to it by the American people.

Considerable sums of money go missing every year because various federal officials are not exhibiting due diligence with respect to their jobs. This is just another way in which the requirements of Article IV, Section 4 are being violated, and, as a result, the principles of the Preamble to the Constitution are not being served.

One might also note that even when the Pentagon is trying to be financially responsible, there are other members of government who engage in wasteful spending. On occasion, Congress and/or the President advocate budgeting money for weapons system and equipment that the Pentagon does not need and for which it has not asked … for example, during the 1990s, Congress proposed spending money for C-130 cargo planes that the air force was not seeking, and Bill Clinton championed equipping the air force with additional B-2 bombers even though the air force had not requested those planes.

Of course, government officials are not the only miscreants when it comes to creating problems for the American people. There are numerous reports detailing the manner in which defense contractors falsify data and rig tests in order to make various weapon systems or military equipment appear to be safer or more effective than they

actually are, and, moreover, there are many accounts concerning the manner in which various defense contractors over-charge the military – or, actually, the American people -- hundreds of dollars for toilet seats that cost less than $20.00, or for light bulbs that normally carry a price that is less than a dollar, and so on.

Another set of costs that is generated through the military – and against which one must weigh whatever alleged value supposedly accrues from those forces – involves the environmental degradation that is perpetrated by the military even in times of relative peace. The atmospheric, land, and water resources of the Earth are under constant assault from the toxic substances (lead, depleted uranium, spent fuel residues, oil, exhaust fumes, plutonium, Agent Orange -- along with other color-coded agents -- that have been, or are being, spewed into the environment on a regular basis.

Any federal official who operates out of one, or another, of the three branches of government and reflects on the information that has been explored during the last 12 pages and does so in a manner that is characterized by qualities of: Impartiality, objectivity, independence, integrity, fairness, and honor would have difficulty concluding that the federal government has provided the states – and their citizens – with a republican form of government in relation to the foregoing issues. Thus, the discussion during the last 12 pages of this chapter indicates that Article IV, Section 4 of the Constitution has been violated on a consistent basis by a variety of federal officials from all three branches of government, and, as a result, the principles inherent in the Preamble to the Constitution have been compromised and thwarted.

In the opening chapter of Andrew Bacevich's book, *Washington Rules: America's Path to Permanent War*, the author mentions the idea of "semiwar" … a term coined by James Forrestal, America's first secretary of defense. Semiwar refers to a condition in which federal authorities have become inclined to perceive threats to the security of national interests everywhere in the world, and 'national interests' usually is defined in terms of what is of value to corporate and military agendas involving hegemony over others.

In order to cope with the foregoing sorts of perceived threats – and some might refer to the condition of 'semiwar' as a virulent form

of paranoia -- federal authorities have demonstrated a readiness to use military force in order to resolve most of the foregoing kinds of threats. Consequently, as pointed out earlier in the chapter, since the end of the second World War, there have been more than 200 documented cases in which the United States government has used force of one kind or another in an attempt to impose its will on some other part of the world.

If one were to view the actions of post-World War II U.S. Presidents through the lenses of, say, the principles governing the Nuremburg trials, then most – if not all -- of those individuals would likely be found guilty of war crimes. In addition, those presidents also would have violated the Constitution – especially Article IV, Section 4 – and, in fact, what made the contravention of international law possible was the failure of those individuals to adhere to the moral and epistemological principles that are inherent in Article IV, Section 4 of the Constitution.

For example, Eisenhower was responsible for the overthrow of democratically elected governments in both Iran (1953) – which led to a quarter century of oppressive dictatorship under the Shah -- as well as Guatemala (1954) – which, eventually, brought about the deaths of tens of thousands of Guatemalans and laid the foundations for more than half a century of tyranny that continues to the present day. In addition, Eisenhower directed the CIA (1957) to undertake a number of clandestine operations in Indonesia for the purpose of bringing about the overthrow of President Sukarno and enabling corporations to gain access to the resources that are present in the outer islands of the Indonesian archipelago.

The only 'crime' committed by Iran, Guatemala, and Indonesia had to do with the efforts of those countries – each in its own way – to democratize their countries through processes such as land reform and enabling the poor to have greater participation in the political process. None of those countries was threatening to attack America, but the process of democracy being pursued in those three nations did constitute an obstacle for American corporations who wanted to exploit the natural resources possessed by those countries at the expense of the inhabitants of those nations.

In addition, during Eisenhower's Presidency, the United States became involved in Vietnam following the French withdrawal from Vietnam as a result of France's defeat at Dien Bien Phu. In 1954, under President Eisenhower, America took a course of action that blocked what could have become a political settlement for Vietnam's problems and, instead, began to support an oppressive, tyrannical government in South Vietnam that brought about the death of approximately 60,000 Vietnamese people.

Not long after John Kennedy succeeded Eisenhower, the new president proceeded to invade South Vietnam because the foregoing policies of Eisenhower had generated blowback in the form of a movement of armed resistance that opposed the joint venture in terrorism that was being perpetrated by the United States and South Vietnamese governments. Using planes that bore the insignia of South Vietnam but operated by American military personnel, Kennedy ordered the use of both napalm and other chemical weapons to be dropped on certain segments of the Vietnamese people and countryside.

Kennedy was deploying US troops in Vietnam without Congressional authorization and in violation of international agreements. He was using those military forces to commit aggression against people in a country that had not committed aggression against the United States but, instead, the resistance forces in that country were merely trying to establish their own sovereignty – both nationally and individually.

President Kennedy, of course, also attempted to commit the same sort of congressionally unsanctioned aggression against the Cuban people by way of the Bay of Pigs fiasco in 1961. As was the case with respect to Vietnam, Cuba had not attacked the United States, and, therefore, neither of the foregoing acts of belligerence that were committed by the United States had been done for the purpose of defending the United States against invasion.

Like Eisenhower before him, Kennedy was acting as Commander in Chief for corporate interests. Neither of those presidents was engaged in defending the sovereignty of the vast majority of Americans but, instead, each of the foregoing presidents was merely trying to clear the way for corporations to be able to exploit the

resources of other countries and, in the process, prevent the citizens of Vietnam from being able to have control over their own resources.

Consequently, both of those presidents violated the provisions of Article IV, Section 4 of the Constitution because their decisions involving countries such as Iran, Guatemala, Vietnam, and Cuba were not carried out: Impartially, objectively, fairly, or with integrity in order to better realize the principles inherent in the Preamble to the Constitution on behalf of the American people, but, instead, those acts were done in order to advance and enhance corporate interests with respect to the aforementioned countries. Furthermore, those actions also constituted violations of international law, but the latter was made possible because each of those individuals first failed to provide the citizens of America a republican form of government.

President Johnson expanded on Kennedy's aggression in Vietnam by -- among other things -- staging a false flag operation in relation to the alleged Gulf of Tonkin incident that was used as a pretext for escalating hostilities in Vietnam and that Robert McNamara, Johnson's Secretary of Defense, later confirmed was bogus and intended to mislead Congress and the international community. The hostilities to which the foregoing fraudulent act gave rise led to the death of millions of Vietnamese people and more than 50,000 American soldiers.

Being Commander in Chief does not entitle one to lie to Congress or to the American people. Being Commander in Chief does not entitle an individual to violate Article IV, Section 4 of the Constitution by failing to exhibit qualities of honor and integrity while acting as Commander in Chief, and, in the process, deny Americans (e.g., the 50,000 American military personnel who gave up their lives prematurely in the unknowing service to a lie) an opportunity to enhance and advance realization of the principles inherent in the Preamble to the Constitution within their lives.

While President of the United States, Johnson also commanded the military to invade the Dominican Republic. This military operation was not carried out to protect American soil and its people from an imminent attack at the hands of soldiers from the Dominican Republic, but, instead, the invasion was instigated because there were fears in the corporate world that a process of democratization was beginning

to take place in that island country, and such a movement constituted a potential threat to corporate interests involving that nation.

The military's invasion of the Dominican Republic did not constitute an instance of providing for the common defense of America and Americans. Rather, just as Smedley Butler had indicated roughly three decades earlier, such invasions are about defending the common interests of a variety of corporations.

Consequently, Johnson's invasion of the Dominican Republic was a violation of Article IV, Section 4 of the Constitution. The decision to invade that country was not made: Impartially, objectively, independently, fairly, or with integrity but, instead, was the result of a bias that favored the interests of corporations over the interests of the American people considered as a whole … as well as favored the interests of corporations over the interests of the Dominican people.

Moving on from Johnson to Richard Nixon, the latter individual's violations of the Constitution were numerous. However, while many individuals remember the crimes surrounding Watergate, fewer people recall that Nixon engaged in a series of illegal bombing campaigns in conjunction with, among other places, Cambodia.

Operation Menu – a covert policy ordered by Nixon and implemented by the Strategic Air Command – took place between March 1969 and May 1970. This operation expanded on the tactical bombing raids that had been instituted under Johnson by, for the first time, employing long-range B-52 bombers to carpet bomb eastern regions of Cambodia.

Operation Freedom Deal followed Operation Menu and continued until 1973. Operation Freedom Deal expanded the targeted areas in Cambodia beyond the bombing perimeter that had been established during Operation Menu.

By acting in the foregoing manner, Nixon failed, in a variety of ways, to provide the American people with a republican form of government. In the process of violating the Constitution, Nixon also transgressed against international law and committed war crimes.

Article IV, Section 4 of the Constitution represents a source of moral and epistemological restraint concerning arbitrary and ill-considered actions on the part of officials from all three branches of

government. When the principles inherent in Article IV, Section 4 are ignored, then not only are the goals that are set forth in the Preamble to the Constitution undermined and thwarted, but, when the Constitution is violated in conjunction with mattes of foreign policy, then, quite frequently, this leads to violations of international law, including prohibitions against the commission of war crimes.

Although Gerald Ford occupied the Oval Office for only a relatively short period of time, nonetheless, he was there sufficiently long enough to contravene the Constitution in a number of ways. For example, President Ford authorized the U.S. military and various intelligence agencies to assist the Indonesian government's invasion, occupation, and near-genocide of the people of East Timor … not because Americans or the United States were going to be attacked by East Timor but because there was oil and other resources located in that region that were of interest to the Indonesian government and various corporations.

Once the foregoing invasion was underway, the United States managed to join other countries in voicing condemnation at the U.N.'s Security Council in relation to Indonesian aggression against East Timor. Yet, U.N. Ambassador Moynihan later revealed that he had been instructed by Ford to take whatever steps were necessary at the United Nations to ensure that Indonesia would not suffer any adverse repercussions as a result of its actions in East Timor.

Furthermore, publically, the United States had announced that it was instituting a weapons boycott against Indonesia. Covertly, however, the United States actually increased the amount of weapons it was supplying to that country.

Acting in a Janus-like manner in conjunction with Indonesia/East Timor -- as Ford and Moynihan did -- in which one thing is said for public consumption while those individuals are simultaneously engaged in secretly supporting that which is being publically condemned lacks both integrity and honor. Consequently, that sort of duplicity constitutes a violation of Article IV, Section 4 of the Constitution, and their unconstitutional behavior enabled the United States to provide logistical, military, and intelligence support to help promote an illegal invasion of, as well as genocidal-like acts in, East

Timor and, consequently, constituted gross violations of international law.

When Jimmy Carter became President, he not only continued on with Ford's Indonesian policy, but, in addition, Carter actually increased the supply of weapons to Indonesia. The increase in U.S. weapons sales to that country during Carter's administration coincided (late 1970s) with an increase in the terror and atrocities that were being perpetrated against the people of East Timor by the Indonesian government.

When Congress insisted on attaching various provisions concerning human rights to any potential sale of advanced weapons system to Indonesia, Carter evaded those provisions by way of subterfuge. More specifically, Carter ordered his Vice President, Walter Mondale, to request Israel to provide Indonesia with Skyhawks (a single seat attack aircraft capable of carrying bombs, missiles, and other munitions), and the Indonesian military used those airplanes to decimate the population of East Timor.

Supplying an array of weapons and munitions to countries such as Indonesia so that they can bully and devastate another country like East Timor does nothing to enhance or advance: The establishment of justice, or ensure domestic tranquility, or provide for the common defense, or promote the general welfare, or to secure the blessings of liberty for ourselves or subsequent Americans. Instead, all that supplying the foregoing sorts of weapons and munitions accomplishes – other than the destruction of places such as East Timor – is to enrich the companies that manufacture weapons, and, therefore, this sort of foreign policy becomes little more than a form of corporate welfare in which government officials – such as the President and Secretary of State – become middlemen who are brokering (enabling to go forth) an arms deal between a supplier and a buyer despite the fact that the country to which the weapons and munitions are being sold is being condemned at the United Nations for its commission of atrocities and aggression.

After Carter's one-term occupancy of the Oval Office ended, Ronald Reagan continued on with what seems to have become a presidential tradition – namely, violating the U.S. Constitution … violations that become a prelude to contravening international law.

For example, Reagan was the first president of the United States to be condemned by the International Court of Justice for his unlawful use of force against Nicaragua.

One might also mention the Iran-Contra affair that occurred during the Presidency of Ronald Reagan. Under the Boland Amendment, Congress had prohibited further financial aide from being given to the Contras in Nicaragua, but a group of officials in Reagan's administration negotiated a covert deal in which arms would be sold to Iran -- that was operating under the constraints of an arms embargo -- and, in exchange for those arms, the Iranians would supply cash that would, in turn, be used to fund the Contras.

Although there are those who claim Reagan was not involved in that scandal, those sorts of claims tend to stretch credulity, or, at the very least, portray Reagan as someone who was oblivious – dangerously so -- to what was taking place all about him by a covey of administration officials (Fourteen of whom were indicted, 11 were convicted, a few were released on appeal, while the remaining individuals were pardoned by President George H.W. Bush during the waning days of his administration … and some commentators have suggested that the foregoing pardons were given in order to prevent Bush, himself, from being implicated in the Iran-Contra scandal by Casper Weinberger, former Secretary of Defense.).

Even if Reagan were not involved in the Iran-Contra scandal, nonetheless, there were eleven administration officials – including Casper Weinberger – who did participate in that affair. Those individuals conspired to deny Americans a republican form of government.

Aside from the issue of President H.W. Bush's possible involvement in the Iran-Contra scandal, there is also his invasion of Panama in 1989 during which thousands of Panamanians died. Prior to the capture and removal of Noriega from office, Noriega not only had been an intelligence asset for the U.S. government since the 1950s, but, as well, Noriega served as a conduit for the supply of weapons from the United States to various death squads and fascist dictators in Latin America.

Furthermore, Noriega was a cocaine dealer. A variety of officials in the United States -- including George H.W. Bush when he was Director

of the CIA -- were well aware of Noriega's status as a major player in the illicit drug trade, and, yet they turned a blind eye to those activities because of the value Noriega had for the CIA as an intelligence asset, together with his ability to facilitate the sale of weapons throughout Latin America on behalf of the United States and a variety of corporations.

Whatever animosities might have fueled President Bush's sudden change of heart concerning Noriega, Bush violated Article IV, Section 4 of the Constitution when he authorized the invasion of Panama because that decision was devoid of qualities involving: Impartiality, objectivity, fairness, honorableness, or integrity. One cannot arbitrarily bring about the deaths of thousands of innocent people and the wholesale destruction of considerable property in Panama (especially in relation to some of the poorest sections of that country) while, simultaneously, claiming that one is conducting oneself with honor, integrity, and fairness.

In addition, President Bush violated international law when he invaded Panama. More specifically, Bush initiated the formation of a plan that involved kidnapping a purported criminal (i.e., Noriega) who allegedly had committed the vast majority of his crimes while working for, and being paid by, the CIA, and in the process of carrying out that kidnapping operation, President Bush caused the deaths of thousands of people.

In other words, by failing to comply with the requirements of Article IV, Section 4 of the Constitution, Bush proceeded to violate international law in conjunction with his invasion of Panama since the thousands of Panamanians who died pursuant to that invasion had nothing to do with Noriega's alleged crimes. As a result, Bush's unnecessarily broad and highly destructive aggression toward Panamanians in general constitutes a form of collective punishment involving thousands of innocent people and, as such, constitutes a war crime.

Like Noriega, Saddam Hussein, had been accorded favorable treatment by the United States (e.g., during the Iran-Iraq War, the United States supplied Hussein with the chemical weapons that he used to gas Kurds). Hussein and the United States benefited from their relationship right up to the time when Hussein no longer served the

interests of the United States government. At that point, like Noriega, Hussein became expendable.

The United States had a number of opportunities prior to the first Gulf War to settle its dispute with Iraq in a peaceful fashion but discarded each of those chances. Bush was insistent on a military solution to the problem.

A form of Kabuki-like theater was orchestrated in Congress in which a young girl – who turned out to be the daughter of a high-ranking Kuwaiti government official – claimed to have witnessed Iraqi soldiers smashing new born infants on the cement floor of a Kuwaiti hospital. The event being described did not actually take place, but – as was intended by its perpetrators -- the emotional impact of that young girl's fabricated testimony helped induce members of Congress to authorize military action against Iraq.

Furthermore, the Bush administration also knowingly fed false information to the Saudi government – and members of Congress -- when it claimed that Iraqi troops were massing on the Saudi border and were preparing to invade Saudi Arabia. Independent satellite photos of the border staging area where the Iraqi troops were supposedly gathering showed that no Iraqi troops were present.

There was nothing impartial, objective, fair, or honorable about the way either Bush or Congress deliberated with respect to their decision to invade Iraq. For instance, no one took the time to investigate whether, or not, the young Kuwaiti girl's story was true, and no one in the Federal government took the time to investigate that girl's background (or, perhaps, more disturbingly, there were people in the federal government who were well-aware of that Kuwaiti girl's identity and might also have been aware that her story was not true, and, nevertheless, they proceeded to keep that information from Congress and the American people).

Finally, few members of Congress, if any, took time to determine if the intelligence concerning the alleged massing of the Iraqi military along the Saudi border was actually true. As a result, there was a morally and epistemologically challenged rush to war by both President Bush (who knew he was lying) and Congress (which failed to exercise due diligence), and in the process, the American people were

not provided with a republican form of government … either by Bush or by Congress.

Moreover, President Bush's attack against Iraq was in contravention of international law. For example, among other things, the bombing campaign that was carried out by the United States under his direction targeted Iraqi infrastructure (which includes water supplies, sewage disposal facilities, and electrical transmission stations), and under the rules of engagement that have been established through international agreements, the foregoing sorts of attacks are prohibited because they help create conditions that are conducive to the rise and spread of a variety of diseases and, therefore, constitute a form of biological and chemical warfare.

President Bill Clinton continued on with Bush's economic sanctions against Iraq and helped to enforce those policies. As a result of those sanctions, hundreds of thousands of Iraqi citizens – many of them children – died because they were deprived of food, clean drinking water, and medical supplies.

There is no integrity, honor, or fairness present in a sanctions program that results in the deaths of hundreds of thousands of people, including many children. Consequently, participating in such a program – as Bill Clinton's administration did – constitutes a violation of Article IV, Section 4 of the Constitution, and, moreover, by becoming entangled in the sanctions program against Iraq, the federal government used resources – financial and otherwise – that should have been directed toward helping Americans realize the principles inherent in the Preamble to the Constitution and, consequently, violated the Constitution in that respect as well.

The willingness of Clinton's administration to violate the Constitution in the foregoing fashion led to the violation of international law. In other words, Iraqi children did not invade Kuwait and were not responsible for the political policies of Saddam Hussein, and, therefore, pursuing a sanctions program that adversely affected Iraqi children as well as other innocent parties in Iraqi society, entailed a form of collective punishment, and, as such, constitutes a war crime.

In 1998 Clinton also ordered a missile attack on the al-Shifa pharmaceutical plant in Khartoum North, Sudan. The strike was

supposedly in retaliation for several truck bomb explosions that had taken place earlier that year in conjunction with U.S. embassies located in Nairobi, Kenya and Dar es Salaam in Tanzania.

Although the U.S. government alleged that the al-Shifa facility had ties to Usama bin Laden and was engaged in the production of the lethal nerve agent known as VX, the so-called evidence on which the foregoing allegations were based was, at best, dubious, and, at worst, known not to be credible. Moreover, according to the German Ambassador and the regional director of the Near East Foundation who was engaged in fieldwork within Sudan during that period of time, the cruise missile strike on the al-Shifa plant led to the deaths of 10-20,000 individuals.

Clinton had failed to exercise: Integrity, fairness, honor, or objectivity in conjunction with the foregoing attack on the Sudanese pharmaceutical plant. In doing so, he simultaneously violated Article IV, Section 4 of the Constitution as well as committed a war crime.

While President, Clinton also helped orchestrate -- at U.S. taxpayer expense -- massive increases in spending with respect to new Israeli settlements in the West Bank. The foregoing subsidization policy reached its highest level during the last year of Clinton's administration.

Channeling U.S. taxpayer money to Israeli settlements rather than ensuring that those funds are used to meet the needs of U.S. citizens constitutes a violation of Article IV, Section 4. In other words, by failing to display qualities of: Impartiality, objectivity, integrity, honor, and fairness in the Palestinian-Israeli conflict, President Clinton failed to give each of the states a republican form of government since the citizens of those states were deprived of the resources that went to support Israeli citizens rather than being released for the support of U.S. citizens.

During Clinton's final year as President (1999), the Balkans erupted once again. This time the flash point enveloped Kosovo.

Earlier in the decade, hostilities had broken out in Bosnia-Herzegovina with Serbs attacking Muslims and Croats, while Croats targeted Serbs. A variety of massacres ensued.

Following a Serbian attack on, and siege of, the city of Srebrenica, the U.S. military began bombing Serbian positions. Eventually (1995), negotiations involving the foregoing conflict took place in Oslo, Norway.

Although a truce was finally reached in which Bosnia-Herzegovina was divided into Serbian and Croatian sectors, the region of Kosovo was left out of that agreement. The majority of people who lived in Kosovo were Albanian and they were seeking their independence from Serbia.

The Serbian President, Slobodan Milosevic, responded to attacks from Kosovo nationalists by invading Kosovo. Several thousand people died and several hundred thousand people were forced into refugee status.

Diplomatic meetings were conducted in Rambouillet, France to try to resolve the Kosovo issue. However, NATO wanted to impose unacceptable terms on the Serbs – such as, NATO would become an occupying force within the entire region – and, as a result, the Serbian National Assembly proposed a counter offer in March of 1999 that advanced the idea of working out some sort of diplomatic solution that would provide the people of Kosovo with enhanced autonomy over their lives on a variety of fronts.

On the very next day, NATO forces (consisting of individuals drawn mostly from the U.S. military) began to bomb various regions of the former Yugoslavia. Several weeks later, the *New York Times* reported that more than 350,000 people had been forced to leave Kosovo as a result of the NATO bombing campaign, and several months after the inception of NATO bombing of, among other places, Kosovo, the number of refugees had more than doubled to somewhere north of 800,000 people.

NATO forces also bombed the city of Belgrade. Numerous civilian casualties resulted.

On June 3, 1999, after more than two months of bombing, a peace accord was struck. Clinton, like so many of his presidential predecessors, had chosen to pursue military options rather than diplomatic ones, and, as a result, the lives of hundreds of thousands of people had been disrupted or terminated.

The alleged purpose of the Clinton bombing campaign was to prevent ethnic cleansing. However, Clinton's policies actually made that problem worse, not better.

Clinton's decision to bomb rather than negotiate lacked qualities of impartiality, objectivity, honorableness, integrity, and fairness. Not only did Clinton violate Article IV, Section 4 of the Constitution, but he very likely committed war crimes as well.

Interestingly, Slobodan Milosevic was tried for war crimes by the International Court of Justice but was exonerated. However, as has been true in the case of so many other U.S. presidents in previous conflicts, Bill Clinton never faced prosecution for his deeds and misdeeds in the Balkans, and, so, one might never know what an independent panel of judges might have determined about Clinton's culpability for his actions in the former Yugoslavia.

Following Clinton, President George W. Bush repeatedly violated Article IV, Section 4 of the Constitution in all manner of ways. For example, despite the absence of concrete evidence capable of demonstrating that Afghanistan had attacked the United States on 9/11, nonetheless, Bush proceeded to launch an invasion against the Afghan people.

Prior to the aforementioned invasion, Afghanistan officials had indicated their willingness to cooperate with America and turn over Usama bin Laden to U.S. authorities if the United States could provide Afghan officials with evidence that Usama bin Laden had been responsible for the events of 9/11. The United States failed to provide the requested evidence, and even Robert Mueller, the Director of the FBI, indicated at that time – prior to launching an invasion of Afghanistan -- there was no evidence or paper trail that tied bin Laden to 9/11.

The United States also sought to induce NATO to participate in the Afghan War. However, under NATO rules of engagement, a member country (in this case, the United States) requesting NATO military assistance is required to provide the other members of NATO with evidence that a country – e.g., Afghanistan – had attacked a member country (i.e., the United States).

Although Colin Powell promised to supply NATO members with the foregoing kind of information, he did not do so. As a result, the U.S. and NATO invasion of Afghanistan did not satisfy the conditions that are required for authorizing the use of force by NATO members against another country, and, consequently, the U.S. led invasion of Afghanistan constitutes a violation of NATO's rules of engagement.

A year and a half later, the Bush administration fabricated evidence concerning, among other things, the existence of weapons of mass destruction in Iraq. In addition, various federal officials also alleged – on the basis of highly questionable information – that Iraq had played a role in the events of 9/11 … a contention that even President Bush subsequently admitted was untrue.

Hundreds of billions – if not trillions – of dollars have been wasted on the wars in Afghanistan and Iraq. Thousands of innocent people in Afghanistan and Iraq have died, thousands of refugees have been generated, and thousands of U.S. military personnel also have died.

President Bush and his administration failed to provide each of the states with a republican form of government in conjunction with the foregoing two wars because, among other things, their decisions concerning those conflicts were not made in accordance with qualities of: Impartiality, objectivity, disinterestedness, independence, fairness, integrity, honor, or refraining from being judges in their own cause … and the members of the Bush administration all had an agenda concerning Iraq and Afghanistan that had nothing to do with whether, or not, those two countries had attacked the United States -- which they hadn't – and everything to do with the exploitation of resources and the establishing of hegemony in the region.

Furthermore, the two foregoing wars diverted trillions of dollars away from the American people for the purpose of causing death and destruction for arbitrary – and, therefore, demonstrably unjustifiable – reasons rather than invest that money to benefit Americans through programs that assist them to work toward realizing the principles inherent in the Preamble to the Constitution. Consequently, once again, the Bush Administration failed to provide each of the states – and the citizens thereof – with a republican form of government.

The Bush Doctrine of preventative war is a policy in which the United States allocates to itself a unique, unilateral right (i.e., no one

but America -- and, perhaps, Israel … with U.S. permission -- has the right to engage in preventative war) that permits the use of force whenever and wherever the United States perceives the existence of a possible threat to American interests. The term "American interests" usually refers to corporate interests and/or military interests that are of tactical or strategic importance for gaining hegemony over – or control of – some part of the world rather than being a process of providing for the common defense of all Americans, and this latter meaning is the sense that is intended in the Preamble to the Constitution.

Moreover, the aforementioned notion of "possible threats" does not refer to on-going, direct attacks of American soil and its people, but, instead, the term "possible threats" alludes to various gaming scenarios in which even though an actual attack has not materialized, nonetheless, someone in power – e.g., Bush, 'The Decider' – wants to take military action in order to forestall the possibility that some set of circumstances might occur in the future. Bush's foregoing Doctrine is rooted in an array of presumptions and ideological inclinations that are in fundamental opposition to what the Constitution requires from federal officials.

More specifically, one cannot pursue the Bush Doctrine and simultaneously provide each of the states – and the citizens thereof – with a republican form of government because the Bush Doctrine lacks objectivity, fairness, honor, and integrity and, instead, gives emphasis to the pursuit of ideological agendas. In addition, complying with the Bush Doctrine tends to require federal officials to become judges in their own ideological causes and agendas at the expense of both the American people and whoever is attacked.

President Barack Obama not only continued on with the militant policies that had been initiated by his predecessor, but, among other things, also significantly expanded the military's drone program in conjunction with half a dozen countries (Yemen, Somalia, Pakistan, Afghanistan, Iraq, Libya). Thousands of innocent individuals have been killed as a result of the foregoing actions.

Consequently, Obama, like many other presidents before him, failed to give each of the states a republican form of government based on qualities of: Impartiality, objectivity, fairness, honor, and so on. As a

result, President Obama not only violated the Constitution of the United States on multiple occasions, but violated international law and, in the process, committed war crimes as well.

The foregoing litany of presidential problems stretching from Eisenhower to Obama gives expression to only a very small sub-set of the total number of instances involving unconstitutional behavior on the part of an array of presidents that could have been mentioned but were not. Furthermore, the foregoing brief overview of presidential misbehavior that has been itemized over the last 10 pages, or so, represents only a very small sampling of the many instances in which U.S. presidents have been actively engaged in violating international law and, frequently, perpetrating war crimes.

During a tour of Monticello (the former Virginia home of Thomas Jefferson) President Barack Obama (accompanied by French President Francois Hollande) broke with a minor issue of protocol in order to be able to better view some feature of the historic site and – presumably in jest – he is reported to have said: "That's the good thing as a President, I can do whatever I want." Although there is much talk by some individuals concerning the allegedly imperial, king-like powers that are – according to the theories of some individuals -- associated with the office of the President, nevertheless, the President of the United States is subject to the same constraints on his or her exercise of power as are Congress and the Judiciary.

George W. Bush stirred up controversy during his two terms as President by issuing more than 750 signing statements (unfortunately, none of them were not in jest) in which he stipulated that he would not abide by – and, therefore, despite possibly being in non-compliance with his oath of office, he would not "faithfully execute" -- this or that portion of Congressionally approved legislation that arrived at his desk for signing. Although Bush would proceed to approve bills that came to him from Congress by adding his signature to them, nonetheless, there were facets of those pieces of legislation (and, sometimes, the entire contents of legislation) that he refused to endorse – and would identify by means of signing statements – because, according to Bush, those sections of the legislation (or the legislation in its entirety) infringed – allegedly -- on various dimensions of his power as Executive or Commander in Chief.

In reality, Bush merely affixed his name to signing statements that had been drafted for him by, among others, David Addington who was legal counsel and chief of staff for Vice President Dick Cheney. Cheney had established a policy in which all Congressionally approved legislation were to be funneled through his office so that such material could be critically analyzed for possible constitutional infringements on the powers of the Executive Branch before the that legislation was passed on to the President for his signature.

In effect, Bush was claiming, based on the counsel of people such as David Addington, that he had the right to determine whether, or not, legislation, or some aspect thereof, was constitutional, and in this respect Bush was claiming that he had the right to do whatever he considered to be constitutionally appropriate. Whatever degree of legitimacy – if any – that might be entailed by the foregoing signing statement policy is not a matter of what Bush, Cheney, or Addington believe about the powers of the Executive Branch, but, rather, is dependent on the extent to which the claims made by Bush in his signing statements could be shown – based on concrete arguments -- to be in accord with (a) the moral and epistemological qualities of Article IV, Section 4 (e.g., Impartiality, objectivity, disinterestedness, fairness, integrity, honor, and not serving as a judge in one's own cause), and the extent to which Bush's claims in his signing statements could be shown to (b) enhance and advance the principles inherent in the Preamble to the Constitution.

In short, the Constitution is not necessarily what Bush (or Cheney or Addington) say it is. Rather, Bush must be able to demonstrate the legitimacy of his claims by means of concrete evidence and arguments that are persuasive beyond a reasonable doubt as to whether, or not, his claims satisfy both of the conditions that are outlined in the foregoing paragraph.

Consequently, the Constitution is not a function of hermeneutical theories and belief systems. The Constitution requires proof and demonstration that its woof and warp – namely, Article IV, Section 4, together with the Preamble – are weaving a Constitutionally legitimate tapestry instead of being leveraged to serve someone's arbitrary whims and ideological agendas.

Nearly a century (May 3, 1907 in Elmira, New York) prior to Bush's use of signing statements and over a century before Obama's aforementioned remark at Monticello, New York governor Charles Evans Hughes [who subsequently served as a member of the Supreme Court -- once as an associate justice (1910-1916) and, then, later as Chief Justice (1930-1941)] is reported to have said something similar to both of the aforementioned Presidents. Hughes claimed: "We are under a Constitution, but the Constitution is what judges say it is …"

The first part of his statement – namely, "We are under a Constitution" -- is correct, but precisely because that segment of his statement is true, the latter part of his statement is incorrect … that is, the Constitution is not what judges say it is. Rather, the Constitution constrains -- both morally and epistemologically -- what judges can say and do (and there are many examples illustrating this point in Chapters 5 and 6 of this book).

What does it mean to be "under a Constitution" if the law is whatever judges say it is? From such a perspective, the Constitution merely becomes tautologically synonymous with a given judge's view of things and, as such, tends to be arbitrary in character.

We are under a Constitution because Article IV, Section 4 of that document, along with its Preamble, establishes the framework through which the rest of the Constitution is to be engaged and assumes significance. More specifically, each of the three branches of the federal government must filter everything they do through the lens of Article IV, Section 4 of the Constitution, and, in addition, Article IV, Section 4 – that is, the guarantee of a republican form of government – must be in the service of the principles inherent in the Preamble to the Constitution.

In other words, if one were to ask why qualities of: Impartiality, objectivity, independence, disinterestedness, integrity, honor, and refraining from serving as a judge in one's own cause (which all are at the heart of a republican form of governance) have constitutional importance, then the answer is fairly straightforward. More specifically, the only way to rigorously and critically engage issues involving: Forming a more perfect union; establishing justice; ensuring domestic tranquility; providing for the common defense; promoting the general welfare, and securing the blessings of liberty for ourselves

and our posterity is through qualities of: Impartiality, objectivity, independence, disinterestedness, integrity, honor, and refraining from serving as a judge in one's own cause.

Any other way of engaging the Constitution will be arbitrary. That is, any method other than the one being outlined above will be based on whims and biases of individuals that cannot be plausibly and viably defended beyond a reasonable doubt to the satisfaction of the vast majority of other citizens.

According to the Constitution, a person who becomes President must recite the following oath. "I do solemnly swear (or affirm) that I will faithfully execute the office of the President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States."

When Presidents violate Article IV, Section 4 of the Constitution (as Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, Reagan, Bush I, Clinton, Bush II, and Obama have all done), then, they also are violating Article II, Section 2 of the same document. This latter violation reflects the fact that individuals who have transgressed against Article IV, Section 4 of the Constitution have not faithfully executed the office of the President, and, as a result, they have not been able to successfully "preserve, protect, and defend" the very principles that they have solemnly sworn to uphold.

Upon entering into an elected office involving either of the other two branches of federal government, one is required to swear to, or affirm, a similar oath to the one quoted earlier in which, among other things, one affirms that one will protect and defend the Constitution of the United States. At the heart of those oaths are Article IV, Section 4 of the Constitution as well as its Preamble since the duties of every office in the federal government can only be faithfully executed if an individual does so through qualities of: Impartiality, objectivity, integrity, honor, and so on for the purpose of enhancing or advancing the principles that are present in the Preamble.

The bond that provides – or should provide – any given citizen with a sense of fealty toward the Constitution is whether, or not, federal officials will execute their duties of office faithfully in accordance with qualities of: Impartiality, integrity, honor, fairness, and the like. In the absence of the foregoing qualities, a chaotic,

arbitrary vortex of moral and epistemological ambiguity forms that is incapable of serving as a source of fealty for citizens with respect to the Constitution.

If – as some people wish to argue -- Article IV, Section 4 is reduced down to purely structural features (such as, whether, or not, a given form of governance is characterized by three equal branches of power that constitute a system of checks and balances) then, the very moral and epistemological principles that are needed to make those sorts of purely structural features work for the benefit of all those who are being governed -- and not just for the benefit of the few -- are missing. As a result, there is no workable system of checks and balances unless the individuals who are executing those checks and balances do so in accordance with constitutionally mandated qualities of: Impartiality, objectivity, independence, integrity, selflessness, fairness, and refraining from serving as a judge in one's own cause, and there is no workable system of checks and balances unless the aforementioned qualities are pursued for the purpose of helping citizens work toward realizing the kinds of principles that are inherent in the Preamble to the Constitution.

When the qualitative dimension of Article IV, Section 4 is reduced down to purely structural features (that is, when the moral and epistemological properties of that Article are absent), then, the Constitution becomes completely arbitrary. Under such circumstances, the meaning of – among other things -- the key clauses of the Constitution (such as: The "commerce" clause; the "necessary and proper" clause; the "contract" clause, or the "supremacy" clause) become a function of the whims of whomever is exercising authority in any of the three branches of government, and, consequently, there is no set of demonstrably reliable moral and epistemological principles capable of regulating the decision-making process in a manner that can be recognized and agreed upon by the vast majority of citizens … everything becomes arbitrary.

In effect, Hughes aforementioned statement indicating that the law is whatever judges say it is tends to doom law to become nothing more than a function of the arbitrary, ideological and philosophical assumptions, whims, and biases of a judge. Hughes apparently failed to understand that the Constitution places both moral and

epistemological constraints on judges in order to constrain those individuals in a way that requires them to operate in accordance with the moral and epistemological qualities inherent in Article IV, Section 4 as those qualities are applied to the principles inherent in the Preamble, and if the decisions of a judge do not give expression to the foregoing conditions, then, what the judge says violates the rule of law.

The rule of law refers to a process in which the moral and epistemological constraints of Article IV, Section 4 are rigorously applied to the principles inherent in the Preamble to the Constitution. When members of any of the three branches of government deviate from the foregoing context surrounding and permeating the rule of law, then, law becomes arbitrary and, as a result, citizens lose their sense of connectedness to, and loyalty toward, that sort of law and, in the process, everything – on both sides of governance (the governed and those who govern) -- becomes regulated by the rule of arbitrary whim.

Democracies that are rooted in rule of law that is being outlined in the first part of the previous paragraph are systems of governance that are dedicated to promoting the sovereignty of its citizens. Systems of governance that lack the aforementioned rule of law tend to be opposed -- in arbitrary ways -- to enhancing and advancing the sovereignty of its citizens and, therefore, do not qualify as genuine democracies.

Unfortunately, for much of its existence, the United States has not been a genuine democracy. The evidence to back up the foregoing claim is distributed across the pages of the present book.

Epilogue

What is the relationship between sovereignty and the reality problem? The conditions of sovereignty – as outlined in Chapter 2 – are conducive to the search for the nature of reality as well as the attempt to discover the nature of one's relationship with Being, whereas the absence of those conditions tends to impede that search and process of discovery in a variety of ways and to varying degrees.

For much of America's history – from colonial times until the present – many of those who have assumed roles within governance have sought to prevent people from having access to the conditions of sovereignty and, instead, have busied themselves providing citizens with counterfeit forms of democracy in which the rule of law is a function of arbitrary values, ideologies, beliefs, and agendas that lack the capacity to convincingly address the following question: Why should I feel obligated to, or have a sense of duty toward, a given rule of law?

The Constitution of the United States gives expression to a rule of law. More specifically, it gives expression to a republican form of government.

However, if republicanism is understood – as some are inclined to do – as referring only to a collection of structural features (e.g., three equal branches of government that serve as checks and balances for one another), then republicanism is missing its most essential dimension -- namely, a set of moral and epistemological guidelines that are capable of placing constraints on arbitrary applications of the structural features that help give expression to a republican form of government. What sets republicanism apart from other purely arbitrary systems of governance that tend to be steeped in the capricious ideologies and belief systems of those who occupy office are principles such as: Impartiality, objectivity, disinterestedness, integrity, honor, fairness, selflessness, and being willing to refrain from serving as a judge in one's own cause.

If the actions of government officials are required to comply with the moral and epistemological metric inherent in republican values, then, those individuals cannot act in arbitrary ways or according to their likes and dislikes, but, instead, they must act in a manner that can be demonstrated to be: Impartial, fair, objective, selfless, and so on.

Without a republican set of moral and epistemological standards to serve as a guiding framework through which to pursue governance, then there is nothing to prevent those who hold office from imposing almost any set of ideological beliefs and values they like on citizens (and repeatedly have done so throughout more than 200-plus years of America's existence) as long as the actions of those officials comply with certain structural features (e.g., what constitutes a quorum? How are bills introduced into the House or Senate? How does the Electoral College work? What is the voting procedure? How old does a person have to be in order to run for President, Congress, the Senate … etc., etc., etc.).

Furthermore, when the moral and epistemological metric of republican principles are present, an official of the federal government (irrespective of which branch is represented) will not be able to implement whatever form of public policy he, she or they like or which the purely structural features of governance permit. Instead, that individual will have to be able to evidentially and rationally show that when a given policy issue is engaged through the qualities of: Impartiality, objectivity, fairness, selflessness, integrity, and the like, then the principles inherent in the Preamble to the Constitution will be constructively enhanced and/or advanced in a demonstrably concrete fashion.

Being structurally able – according to various Constitutional rules -- to pass legislation or make Executive or Judicial decisions is not enough. One must be able to put forth a strong case that is capable of persuading citizens beyond a reasonable doubt that a given piece of legislation or Executive/Judicial decision is done in accordance with the aforementioned moral and epistemological values that are entailed by Article IV, Section 4 and, in addition, will be capable of constructively enhancing and/or advancing the principles/goals present in the Preamble.

Any instance of legislation that cannot satisfy the foregoing two conditions of republican governance should be considered to be null and void. In addition, any Executive decision or judgment of the Judiciary that does not comply with the two aforementioned conditions of republican governance should not be permitted.

What makes a given rule of law arbitrary is the absence of any set of moral and epistemological guidelines capable of placing defensible restraints on what people who govern can and can't do. Moreover, the presence of such a set of guidelines is something that people can recognize as being necessary because everyone who is interested in establishing the conditions of sovereignty wants a form of governance that operates in accordance with principles of: Impartiality, objectivity, selflessness, disinterestedness, independence, integrity, honor, and refraining from being a judge in one's own cause … in other words, there is no rational argument that is capable of defending a form of governance that is not based on the foregoing republican principles.

Finally, requiring government officials to operate in accordance with republican moral and epistemological values is not sufficient and as such is incomplete. Those guidelines must be administered in conjunction with the right set of goals.

The Preamble to the Constitution gives expression to an appropriate set of goals. If sovereignty – both individually and collectively – is to become established, then, the form of governance that one employs must work toward realizing: Justice, tranquility, defense, general welfare, and liberty, but the only way in which this can be done is by pursuing those goals through qualities of: Impartiality, objectivity, integrity, fairness, and so on.

A republican form of governance has three dimensions. Firstly, it entails a set of moral qualities – e.g., integrity, fairness, and selflessness – that are intended to help guide government officials to struggle to do the right thing in all of their actions. Secondly, a republican form of governance also gives emphasis to a set of epistemological standards – e.g., impartiality, objectivity, disinterestedness – that is intended to assist government officials to strive to remove all forms of bias from the process of searching to discover both the nature of, as well as the best way to realize, the purposes set forth in the Preamble. And, thirdly, a republican form of government encompasses a set of structural features – procedural rules – that establish a context or framework within which, and through which, the moral and epistemological qualities of a republican form of government can be used to weave the tapestry of governance.

Many examples have been given throughout this book that delineate what happens when the moral and epistemological qualities of Article IV, Section 4 are not present to guide the enhancement and advancement of the principles and goals that are given expression through the Preamble. When a truly republican form of government is not permitted to operate in accordance with the three ways that were outlined in the previous paragraph, then: Genocide of Native peoples occurs; slavery is institutionalized; women are relegated to third and fourth class citizenship; workers are denied livable wages, reasonable working hours, as well as safe and healthy working conditions; corporations are treated as persons who have more rights than a natural person does; an unending series of arbitrary wars are waged; toxic wastes are dumped; environmental concerns are discarded; strip mining and clear cutting are enabled; education becomes a tool of control rather than a tool through which to help realize sovereignty; healthcare is considered to be an opportunity for generating profits rather than a universal right; the media are required to serve the interests of power instead of the needs of the people; hunger is allowed to invade the lives of millions of individuals; poverty and homelessness are not only enabled to exist but are considered merely to be forms of unavoidable collateral damage that result from the activities of the rich; private banking interests are given control of the monetary system; derivatives and other forms of financial gambling are permitted to threaten the welfare of society; protecting property becomes more important than protecting the basic rights of all people; American citizens of Japanese ancestry are arbitrarily deprived of the rights of citizenship; nuclear weapons are permitted to be built, tested, released and proliferate, all to the detriment of people everywhere; protecting the interests of those who control non-renewable forms of energy is given preference over protecting the interests of the vast majority of people by searching for, and use of, renewable forms of energy; voting rights are denied to different groups of people based on issues involving race, gender, ethnicity, property, and money; gerrymandering occurs; partisan politics rules the day; mind control programs like MK-Ultra are funded by the government; lobbyists are permitted to dominate what takes place in the halls of governance; loss of the commons (air, water, land, and resources) to corporations is authorized; censorship and propaganda are encouraged while good

journalistic practices are discouraged and suppressed; the military-industrial complex is assisted to dominate government budgets as well as to control a great deal of what takes place in government and society; chemtrails are allowed to befoul the commons; bankers and financial institutions are freed to act irresponsibly and, in the process, create the conditions for economic crises, recessions, and depressions; corporate welfare is treated as desirable, while welfare for the poor is frowned upon and outlawed; the legal system is tilted in favor of those with wealth and against those who are poor; covert operations that illegally intervene in the governance of other countries are let loose on the world; white color crime that causes far more deaths and financial damage than street crime is largely ignored, while street crime is used to scare people into funding the militarization of police forces; violations of international law involving extreme rendition and torture are rationalized; depleted uranium is released to irradiate land, crops, and people in hazardous, lethal, injurious ways; scandals like the Teapot Dome Scandal, Watergate, Iran-Contra, Guantanamo, and Abu Ghraib become all too common; in contravention of international law, chemical warfare in the guise of napalm, Agent Orange, and a variety of other color-coded agents is authorized to be dropped on people, their homes, and their crops; domestic spying/surveillance programs become endemic; trade bills that promote the interests of corporations but not the interests of people in general are agreed upon; the national debt is irresponsibly allowed to soar to unmanageable heights; 9/11 becomes a tragic episode of Keystone Kops; legislation such as the Patriot Act is passed despite the fact that virtually no one who voted for that bill actually read its contents; out of control intelligence agencies roam throughout the streets of societies both foreign and domestic.

If all of the foregoing travesties of governance had been required to be rigorously vetted before the fact by individuals who were held to account by moral and epistemological qualities of republicanism that were to be practiced in the service of the principles inherent in the Constitution, then American history might have been very different. If a truly republican form of government had been pursued, then some kind of legitimate sovereignty might have emerged rather than the counterfeit form of democracy that that was instantiated and which

proceeded to enable all of the foregoing desecrations of governance to take place.

The phrase "before the fact" has been underlined in the previous paragraph to lend emphasis to the foolhardiness of trying to correct government missteps after the fact as is currently done – with varying degrees of success – by the Supreme Court. Not only should the Supreme Court critically engage legislation and Executive decisions before policies are implemented, but, in addition, the members of the Supreme Court should restrict their judgment to whether, or not, various instances of legislation or decisions are done in accordance with the moral and epistemological requirements of Article IV, Section 4 for purposes of enhancing and advancing the purposes of the Preamble in demonstrable ways.

Although Article III, Section 3 of the Constitution makes a distinction between original and appellate jurisdiction, the wording of those passages is actually capable of entitling the Supreme Court to assume original jurisdiction in almost all cases and, therefore, being able to engage such cases before the fact of implementation rather than after the fact. More specifically, Section 2 states: "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction," but, presumably, there is not likely to be any instance of legislation or Executive decision that will not have implications, in one way or another, for all of the states, and, thereby, provide them with standing in such cases, or that is not likely to affect "ambassadors, other public ministers, and counsels" in some fashion since the meaning of the word: "affecting" is not precisely stipulated in the Constitution and would become established in any given case through the application of republican moral and epistemological values by either the Supreme Court or by a Congressionally mandated People's Constitutional Oversight Committee (or something of a similar nature) that is consistent with the properties of sovereignty that were discussed in Chapter 2 … and the latter provision is permissible since Article III, Section 2 also indicates that possibilities beyond original and appellate jurisdiction are permissible "…with such exceptions, and under such regulations as the Congress shall make."

One last question needs to be raised. If the moral and epistemological qualities of: Impartiality, objectivity, independence, selflessness, disinterestedness, fairness, integrity, honor, and refraining from being a judge in one's own case are inherent in what constitutes the republican form of governance that is guaranteed in Article IV, Section 4 of the Constitution, then, how did a succession of individuals (beginning with the Framers) deviate so badly from that requirements of the Constitution?

Oddly enough -- but, unfortunately, quite appropriately – the answer to the foregoing question might be found amidst the properties that constitute being a psychopath. More specifically, a psychopath is someone who is characterized by traits such as: (1) a grandiose sense of self-worth; (2) inclined to be manipulative of others; (3) lack of empathy; (4) resistance to accepting responsibility for one's actions; (5) the absence of long-term, realistic goals; (6) being impulsive; (7) acting irresponsibly; (8) poor behavioral control skills, and (9) devoid of conscience or operating with a severely diminished sense of conscience.

While a certain percentage of the population -- estimated as being between 2-4 % -- seem to be genetically predisposed toward the condition of psychopathy and cannot help being as they are, the rest of humanity is psychologically, emotionally, and conceptually capable of giving expression to the qualities of a psychopath under the right set of conditions. For example, when an individual is immersed in an ideology or belief system to such an extent that the person is disinclined, or unable, to critically question the tenability of the sort of ideology or belief system that governs his, her, or their perception of the world, then, such individuals often tend to exhibit all, or many, of the aforementioned psychopathic traits.

`The antidote to the foregoing condition is to engage existence through qualities of: Impartiality, objectivity, independence, disinterestedness, selflessness, fairness, integrity, and honor. However, when one fails to employ the foregoing kinds of republican values and principles, then, one's mental/emotional/conceptual stance tends to become rigid or closed off, and, as a result, one begins to think of oneself in grandiose terms and as incapable of being wrong about the nature of reality, and this state of mind is used to rationalize one's

tendency to: Exhibit a lack of empathy for anyone who doesn't think like one does; display a diminished sense of conscience with respect to how one's actions affect others; become willing to manipulate other people for one's own benefit; be unwilling to accept responsibility for one's actions; show resistance toward considering the long-term ramifications of one's actions or critically examining how realistic one's goals are; be dismissive of any allegations that one is acting irresponsible or that one's actions are impulsive and lack proper behavioral controls with respect to the manner in which those actions are adversely affecting, or will adversely affect, the lives of others.

When government officials are not required to comply with the moral and epistemological qualities inherent in Article IV, Section 4 of the Constitution or are permitted to treat Article IV, Section 4 as if it were devoid of those sorts of moral and epistemological considerations, then, those officials tend to drift into, or are drawn into, psychopathic-like modes of behavior. One might refer to this condition as being an instance of: Ideological psychopathy, and one can identify the presence of this sort of pathology by noting the extent to which republican qualities of: Impartiality, objectivity, independence, disinterestedness, integrity, fairness, selflessness, and refraining from being a judge in one's own case are absent in the actions of the person being evaluated.

Across the landscape of American history, far too many federal officials from all three branches of government have permitted themselves to engage the issues of governance through the lenses of ideological psychopathy instead of through the moral and epistemological filters of republican values. Rather than question their biases, assumptions, presumptions, and ideological predilections, they have arbitrarily sought to forcibly impose those biases, assumptions, presumptions, and ideological predilections on other people through the use of government facilities such as the courts, the military, educational institutions, and law enforcement … and, more often than not, the results have been disastrous, tragic, and entirely unnecessary.

The foregoing results are "entirely unnecessary" because the means for establishing the conditions of sovereignty that have been outlined in Chapter 2 have been guaranteed to us through the manner in which the moral and epistemological values of republicanism

inherent in Article IV, Section 4 of the Constitution can be used (but, for the most part, have not been so used) to help all of us – and not just the few -- realize the goals that are present in the Preamble. Unfortunately, due to the presence of ideological psychopathy that is stalking the halls of governance, Americans have been denied the opportunity to pursue real sovereignty and, instead, have been force-fed counterfeit forms of democracy that consist of nothing more than arbitrary systems of governance that are being driven by one form, or another, of ideological psychopathy.

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