





**A Riotous Black Man  
from  
Way Down South**

**An historical novel, exegesis and response  
to Examiners**

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**Volume 1  
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I, Brian Frank Carroll, declare that the thesis entitled *A Riotous Black Man From Way Down South: An Historical Novel And Exegesis* is my own work and has not been submitted previously, in whole or in part, in respect of any other academic award.



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## *Abstract*

This creative writing thesis is comprised of:

- a) a short exegesis describing and reflecting on the research, technical concerns and issues informing the writing of the novel
- b) *A Riotous Black Man from Way Down South*. This is an historical novel which comprises the first volume of a projected trilogy. It is a *bildungsroman* based loosely upon the life of John Joseph, the first man of thirteen prisoners tried for High treason following the Eureka Stockade uprising.

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**A  
RIOTOUS  
BLACK MAN  
FROM  
WAY DOWN SOUTH**

**Brian Carroll**

## PART ONE

### CHAPTER ONE

New Orleans, November 1852.

“Jonathan, there is a favour I would ask of you before I let you go,” my father said in his soft southern drawl.

I waited for him to explain, and looked around the old man’s study. Book-lined walls, shelved in bookcases of dark heavy wood, made the dark red drapes seem brighter, yet somehow deeply luxurious in the dull light of the oil lamp. I always enjoyed these after-dinner chats, usually over brandy, and with a good cigar. We had no need to be careful: no need to think before we spoke, for the slave-owning, purebred-white part of his family had risen from their table, and departed to cherish their jealous grievances elsewhere. Since my return from France Father and I had enjoyed the comfortable atmosphere of his study.

As a child I had spent most of my time with him at my mother’s house, where we had played together as father and son will do, when I was a very small child. There he had begun to talk to me in both French and English, and I had learned both languages naturally. Later, he had taught me the importance of bookkeeping and business, trade and current events by taking the time to discuss them with me. Such activities always seemed to conclude by my being sent to bed at a slightly earlier hour than usual, while he and mother followed more adult diversions.

For the last year, since my twenty-second birthday, Father had changed the location and nature of those evening *tête-à-têtes*, so that we sat in his mansion like two gentlemen meeting at their club, talking, or silently reading. Always relaxed, always easygoing. But even if I am multi-lingual, and speak and act like a gentleman, I do not rate as one, and would never have gained entry to any self-respecting New Orleans club. In this town,

being a gentleman is incompatible with being black. On those days when he did not wish to see me there after he had eaten dinner, he sent his slave Ned to inform me that I should not visit him on that particular evening.

Looking back, I have to admit that during the last year I had received affectionate praise, criticism, admonition, and exhortation, from my now-elderly parent. Since my return from Paris he had accorded me the special compliment of seeking my advice about his various investments and properties, and he had always listened intently to my opinions, even if he had not taken my recommendations. He made it quite clear that he was seriously considering sending me back to France in the near future to supervise his business interests there. He also made it clear that Allan, my younger brother, would always remain in New Orleans to manage the nearby plantation.

But tonight our conversation took a different direction, for never in my life had I been asked to do a favour for my father.

But there again, he had never mentioned setting me free.

I noticed that he had been reading *DeBow's Review* which reported the fortunes to be made at the gold fields around San Francisco. He gave a worried sigh, then laid down the newspaper. Impatiently he picked up a letter. "This is from Henry, complaining that whenever Allan and his friends visit the plantation, they run riot. He orders Henry to his room, then, with the manager removed, he and all of his *American* friends take their pick of the slave women, and rape them." He sighed again, and remarked disdainfully, "He is so *American*! That he cannot act with common decency, and select a *placée*, just as I did, and my father before me!" He paused, and took off his spectacles.

Unable to guess the favour he was about to ask, I waited for him to continue.

"I planned to give you your freedom and inheritance openly, while the law still permits it. We both know that we can trust neither your brother nor the law to honour my wish to set you free when I am dead. Just a few moments ago Allan and I discussed his

desire to join a party of his friends in a hare-brained venture to the California gold fields. I must say that I am reluctant to pay his way, for he can be such an immature... Anyway..." he interrupted his own thoughts - "I figure everyone, even Allan, should have the opportunity to sow a few wild oats. So I have decided to give him five thousand dollars, to pay both your ways to California, and no more. As a favour to me I am asking you to go with him as his servant, and to watch over him for my sake. I know the two of you have never gotten along, and that it annoys you that your younger brother will inherit my estates in this country. But as you might have guessed, I also plan to leave my French investments, which Allan knows nothing about, to you. That will mean that you will each have half shares in my estate when I die." Here the old man paused, perhaps hoping that I would declare my undying brotherly love for Allan. I felt I should offer a token explanation, but as I was about to reply, he shook his head, frowned, and raised a single eyebrow, then continued.

"You can have your say in a minute - for now you don't have to deny what I said - I know that if I were you, I should feel that way too. I understand your disappointment. Because your mother was black, you are still legally a slave, and we both know that I could make you go with Allan. But we both also know that he feels exactly the same hatred for you as you do for him, and that unless I free you legally before I die, he would never do so. In fact, he'd probably send you out to work in the cotton fields on the day I die!"

"But as I said, I am asking you to go, and to spend six months looking after Allan in California. I know that he and his friends will make things difficult for you. While he will consider you his slave, I ask that you act like a brother, offer to counsel him, try to keep him from wasting the money I have given him, and see if you can keep him out of trouble. Most importantly, I want you to send me a weekly letter informing me *truthfully* about how Allan is making out as a goldminer. I will reward you now with a gift of five thousand dollars to take with you for emergencies, and I promise you that at the end of six

months I will give you a similar sum, to ensure you have a proper start in life. Of course, once you go back to France, as my heir you will inherit the assets there. Well...?”

I found it hard to respond in an unemotional way. This room held so many memories of childhood and adolescence. The intimacies I had shared with my father, my unspoken affection for this man who, though he would never admit it, seemed to favour me over his white, legal son and heir. Truthfully expressing my feelings as a man was very difficult right here and now. As I sipped my cognac I struggled to formulate my reply. My mood swung from such joyful memories as when my father had told me as a young boy that I would be properly educated by the family tutor of one of his friends who lived just outside Paris, rather than being sent to the plantation as a field hand. But then I remembered the depressing and shameful times when Father had shown partiality to Allan, favouring him as his only legitimate son. I could not help also remembering the derogatory remarks Allan had made to me after emerging victorious on those occasions.

I noticed that Father was becoming impatient, so I continued to think out loud. “I can only thank you with all my heart for setting me free. I am stunned by the money you have offered, and the hope of an inheritance, as a free man, in the country I have come to love. I will never be able to pay you back. Going with Allan is not to my liking, yet I guess I don’t have any choice. But before I say yes, could you tell me why I have to go, why Nate can’t go instead of me? We both know that Allan would like that better, and that Nate would be a better servant than I ever could. What have I done to make you punish me by sending me with Allan, after you have set me free?”

“Nate isn’t as smart as you, and would never be able to talk Allan out of his impulsive ways. Anyway, he can’t write to me to keep me informed of what’s happening out there.”

“Father, I’m sure that he could do it better than I! Allan resists anything I suggest on principle. You said a moment ago that you understood why and how we hate each

other: we both know that he is quite capable of selling me to another slave owner in California and that I would never be seen again. The prospect of being murdered or worked to death is not particularly appealing”.

“And that is precisely why I am giving you your own emergency funds, for if Allan even threatens to sell you, you will have to flee. I do not intend to tell Allan that I have also given you funds of your own. You have my permission to use the money to escape to freedom. By sending you out of state with Allan I am trying to protect you - so I am not really sending you for Allan’s sake, but for your own. If it were known that I have set you free here and now, you know that the law would require you to leave the state within thirty days. A black man travelling on his own without a master has all too often been assumed to be a runaway slave, and you could be kidnapped back into servitude. It will be safer for you if Allan believes you are still a slave.”

I believed him, and felt another great surge of affection for him. In business he might be a scheming, unprincipled manipulator, but he was the only father I had. Lots of other boys in my position had been sent out to work in the fields, while their white brothers or sisters lived lives of luxury. Strangely, I wondered why I did not bridle at the idea of informing Father of Allan’s activities. Perhaps I was swayed by the fact that I had actually lived to hear Father say “I understand” to me. Most likely, I really did hate my brother as much as the old man thought.

“If you wish me to go, I will, Father, but I have some conditions. The first is that I am party to all discussions and plans which you and Allan make. The second is, that you sign a properly drafted and dated legal document acknowledging me as your son, and specifically granting me freedom. Allan need not know about this.”

“I have already done so, both here in New Orleans as well as in Paris, and there are originals lodged with both sets of lawyers. The Paris ones were dated last year, and the

New Orleans ones came into effect today. I have also had copies made for your mother as well as for you. Keep them hidden with the money I'll give you."

I thanked him sincerely and arranged to finalise arrangements with him on the following day.

Allan was not happy that I - his brother - or half- brother - as he always stressed - attended the meeting with my father the next day. He turned purple when informed that I would be going with him, ensuring that his feelings were made quite clear both to Father and to me. Father gave him no chance to control the discussion by conducting it in French, a language which Allan barely knew.

"I have decided that if I let you go to California you will need a personal servant, so I will give you Jonathan to take care of you."

"Then that's one decision you can undo, because I do not intend to be encumbered in any way by this black bastard. You have wilfully mismanaged our estates and I know that when I inherit them I shall have to fix them up or go broke - so I am not prepared to look after your misbegotten slave as well. Since childhood I have had to spend my life shadowed by that monstrosity, and have had to accept and suffer his presence as my personal slave. So I have no intention of taking him with me, and to continually suffer as the butt of my friends' jokes because of him." He spat out the words, and, as usual, Father did not recoil but replied in kind.

"Fine. Then you will save me as well as the estate the expense of your junket - for that is what it shall be if I allow you to go alone. I am sick and tired of settling your gambling and whoring debts, and I want to make sure you actually go to the goldfields. Why, on past performance, you might just send me fictional letters and accounts from an imaginary mining trip, when in reality you are shackled up with your friends in some San Francisco bordello. I do not trust you enough to send you alone. With all his faults, and

despite his colour, I trust Jonathan. He is more honest than you will ever be. So either stay home, or take him with you. Unless, of course, you decide to pay your own way.” Father turned back to his newspaper without further comment.

So it was decided - I would go along as servant on Allan’s expedition to the goldfields of California.



## CHAPTER TWO

The journey from New Orleans by the steamer Falcon to Changres on the Panama isthmus was one which Allan and his three friends were quite prepared to enjoy at my expense. As the only servant for the group, my work involved not only the duties of a man-servant but also cook and waiter. For the first two days at sea I was kept busy learning how to prepare food in the ship's galley, and acting as servant/slave to the entire party.

I was forewarned of my future status when, the evening before our departure, Allan and his friends took me to a fancy restaurant, where they rented a private room and insisted that I alone serve them. I resented having to work so hard to meet the unreasonable demands and occasional cuffs from Allan, and threats of violence from every member of this group of louts.

When we finally sailed the next morning, things got worse for me when we ran into serious storms in the Gulf of Mexico. Despite my own queasiness, the hale and hearty Allan and his two friends who were not seasick insisted I get their breakfast.

I staggered into the galley feeling as though I were about to die, and set about preparing a breakfast for Allan and his companions. The first person I encountered in the deserted galley was a huge black man, who grinned at me before commenting, "Man, you look whiter than your master", then roaring with laughter. Noting the man's massive hands I decided, despite my anger, to laugh right along with him. My new friend continued, "Those white boys must be paying you a fortune to get their fixings for them on a day like this".

"I'm sorry to say that I'm his slave: he's my half-brother, and our father sent me to care for him before setting me free."

“Man, you talk and act like a white man, and a Frenchie at that – so let me tell you something. If you believe their promises, you must think you are white too, and that they have to tell you the truth. That is one very dangerous assumption for one of *us* to make. Take the advice of an ex-slave like me - take your freedom, and run. Don’t ask for it, or worse yet wait for one of them to give it to you. Anyway, I’ll get you some cold beef and pickles, and a plate of bread to take to your master and his friends. There’s no hot stove to cook food on today.”

I accepted the man’s offer and, when he reappeared a few minutes later, said, “Thanks. My name is Jonathan”, and held out my hand.

“Sam,” my new friend replied. “Don’t forget you’re one of *us*. I’m usually around here. Look me up again if you like, and I’ll teach you what you have to know to be a ship’s cook. Anyway, take my advice, grab your freedom when you can, like I did.” He grinned at me again, and then turned toward the passenger who had just entered.

Next day I went to tell Sam that I wanted him to teach me how to cook. I was a pretty good cook, but the dishes I had learned to prepare at home were not suitable to the cramped, poorly-equipped galley. Our kitchen used fresh foods every day. At sea, it was a matter of using salted or smoked meats, and fresh vegetables were always in short supply. Surprisingly, fresh seafood was not readily available either.

For such a large man Sam moved around the kitchen at amazing speed. He showed me how to fry up batches of bacon, and how to make the beans which had soaked overnight into a filling, if not too tasty, breakfast dish. Clutching a large spatula in his enormous fist, he turned great piles of bacon in the frying pan, while pouring coffee out of a large pot, and then set about preparing toast. I thought he was going to give me the food to take to Allan and his friends. But he winked at me conspiratorially, “Let’s make the young masters wait an hour or so for their breakfasts”, he said, choking with laughter. “If they are not pleased with the service, they might decide to come and get their own

breakfast, instead of waiting to be served by you - you ungrateful lazy slave!" He mimicked the attitude and simpering tone of a white master.

Eventually I took the cold food to my brother, and was rewarded for my tardiness by seeing him turn a deep shade of green, and without saying a word, head for the side of the ship.

I reported back to Sam, who roared with mirth, "Now you've learned an important lesson about making Master wait - there's nothing like unsatisfactory service to make them do their own work, especially when it comes to eating. We all like to eat, so why should we serve them, while we are hungry ourselves?"

"You are one bad-assed black man, and likely to get me flogged," I laughed. This reply did not make Sam laugh, for he stopped short, and with a serious expression on his face flatly stated, "I don't allow anybody to even touch, let alone flog, any friend of mine." The grin suddenly came back to his face, "There's another friend aboard I want you to meet after I wash up here. On the way to her cabin, why don't we stop by your brother's, and get the message across that you have BIG friends aboard."

Using the excuse that I needed a book, we stopped by the cabin, littered with the bodies of my brother and his party, all of whom took in the size and devotion of my new friend. They would, I hoped, be less belligerent in the future.

"Mary-Ellen, this is Jonathan". I was surprised to see a beautiful woman in her early twenties, petite but with a surprisingly well-developed figure. Mary-Ellen had an olive skin, with finely chiselled features, light brown hair, and striking green eyes. "Sam tells me that you're your brother's slave, now surely that can't be right?" Her voice was soft, and her tone suggested teasing, but her manner had a seriousness that hinted that she understood my circumstances.

"Well, my mother's a slave who became my father's *placée* before he married a white woman."

“My mother was a slave too - a field-hand in Augusta, Georgia. She was a voodoo queen from Santo Domingo, but that didn’t stop them taking her away to sell her when I was eight. She was just like her daughter - a rabble rouser.” Suddenly the smile came back. “You were born and raised in New Orleans? I have just had to leave there suddenly - I’ve been going around the plantations telling the slaves to run away - that’s why I’m on this tub. How far are you going... all the way to San Francisco, or just to Changres?... Sam, any chance of a coffee? ”

While Sam went to bring us coffee, Mary-Ellen settled down comfortably on the small couch under the porthole of the cabin. She patted the space next to her for me to sit there. “When Sam mentioned you yesterday, I asked him to introduce us. It’s possible to escape, you know. I did, quite legally. Let me tell you about it.”

“I’d like to hear about it, if you have the time.” I smiled at her. “But tell me first, why did you have to leave New Orleans so suddenly?”

“Honey, I have the whole trip to tell you everything.”

### CHAPTER THREE

By the time that Sam brought the coffee, she was telling me about her childhood. She vividly remembered her light-skinned, quadroon mother, who from an early age had told Mary-Ellen about her heritage. “She really was a voodoo queen, and our family came from Santo Domingo when she was a young child. Momma learned the voodoo arts from her mother. Before she was taken away she taught me some of her knowledge.” She paused and looked at me with a half smile, “Well, enough for me to give the impression that I know a lot more than I really do”. She looked over her shoulder in a conspiratorial way, even though we were in her private cabin. “Would you mind if I spoke in Spanish?” She paid me the compliment of assuming I spoke the language.

“No, of course not, but please speak it slowly, we have different accents – I learned it in Europe.”

This conversation was intriguing. Here I was, alone with her in her cabin, while she shared the most intimate secrets of her childhood. She was in earnest, yet from time to time she spoke and acted as though she were flirting. What hand did Sam have in this situation? She did not even comment on how I had learned to speak Spanish, but continued in that language as though I had left her question unanswered.

“My experience with slave-owners is that they can be easily fooled, if you do it with flair,” she paused again to arch an eyebrow at me, before continuing, “that’s why Sam thought I’d be able to help you see the reality of your situation. But tell me first - what is your situation?”

For some reason I was irritated.

“Well, I’ve only known Sam for a short time, and I usually take awhile to open up to strangers.” Then I mentally kicked myself, for if she were trying to make friends with me, I could at least share my ‘situation’ with her at no risk to myself. “My Momma was of mixed race. Momma has her own New Orleans house, and is still my father’s mistress. He eventually married an American wife, and my half-brother Allan is his legitimate son. We have always hated each other. Well, he started it... I also have a half-sister, and we get along fine.”

She became a coquette again. “I can see that you would get along well with women. Some men don’t, you know.”

This amused me because I always regretted that, even with a light-skinned mother and a white father, I had been born with such a black skin. I figured if I had been born with a whiter skin, women would have been more attracted to me. Then I told her why I had laughed. I liked her even more when she didn’t laugh with me.

“Even though my late husband was Cuban, and a white man, I didn’t marry him because I fell in love with a white man. I married him because he offered and gave me freedom. Perhaps it would be better for me if I were attracted to men with lightly-coloured skin. But I’m not. So let me assure you that to some women, at least, the colour of your skin is of no consequence, or even better, they like you the more for it.”

I was somewhat at a loss to know what to do or say next, so I interjected. “I’m sorry, it’s about time I went to get lunch for Allan and his friends.”

“Why?”

“Well, as I said, I am his servant - my father’s slave, and that is what I have to do for now. But if you have time later, I’d really like to continue this conversation when I’ve more free time.” I half expected her to be angry, but she just smiled, and said, “We’ll see.”

As I left, I felt like a clumsy, unsophisticated youth. In France I had never felt like that, for there I had many female friends, and some lovers. I could not work out why I felt so inexperienced and disarmed by this strange woman.

Sam continued with my education as a ship's cook, and I prepared lunch for Allan and his friends, who, in the calmer weather, had regained their appetites. Salt meat and rice didn't take long to prepare, and I stayed and helped Sam in the galley. When lunch had been served, Sam and I sat down and shared a lunch of biscuits and cheese.

I asked him why he had introduced me to Mary Ellen. "Well, she was pretty scared when she came aboard. As you know, she married a freeman, who met her when she was about fourteen, and had her educated in a convent, then, when she was eighteen took her to his plantation in West Virginia. It so happened that he hated slavery, and freed her, as he did all of his slaves. He was very active in the antislavery movement, and they spent most of their time between Boston and New Orleans. She has forgotten more about Creole cooking than I'll ever know, and used her knowledge to get short jobs catering on plantations, so that she could talk the slaves into running away. She nearly got caught when she was recognised by an overseer. She just made it aboard before we sailed, and the Captain doesn't know she is black. Anyway, to take her mind off things, I told her about you. She said she'd like to talk to you." Sam bellowed with laughter as he said, "I told her how smart and well-educated you were!"

Later that afternoon, I knocked on her cabin door, with a pitcher of cordial and two glasses on a tray. When she opened the door, I adopted a servile manner, "Would my lady like a cool drink?" She laughed, "I like a man who knows his place!"

So we continued. She told me about her 'railroad' activities, I told her about how I loved to read, and how languages seemed easy to learn, and business, and finance. "Father and

I used to spend a few hours most evenings talking, and that is how I'm here." I recounted my five years learning business in France, where I had, by the time I left, been trusted to act as my father's representative. I told her everything about the plans for the trip, but for some reason I did not reveal to her that my father had given me the money. Instead, I told her how I had dreams of making money on the gold fields, and making my way as a free man. She laughed, "Do you really think your brother would let you go? Do you know how much you are worth as a slave? My late husband had no overseer on his plantation. All his workers were free, and he had an agent run it for him. The agent had an education like yours. As a slave that agent would have been worth thousands. Don't let anyone know of your background, because you'll be forced back into slavery - if you ever escape your brother. Believe me, I have been involved with freeing slaves for ten years, since I was eighteen, and I know how evil the system is. It is so evil that one day this country will be forced to fight a war about it to decide the issue one way or another. When I was a small child I waved my mother goodbye, as she left on the back of a wagon. She wanted to take me with her, but they kept me. Although I was worth only a few dollars as a field hand, I looked white, and was worth a lot more as a *placée* in New Orleans."

The intensity of her passion flared in her eyes, then she paused, "Let me teach you about survival in America. That's the answer to your question about why I wanted to meet you. Men like you are too important to our people to be wasted in slavery."

I too felt the intensity of the moment. "I really would like to learn from you and Sam. I don't think that things will ever be that way for me, but it would be unwise not to prepare for the worse..." In France I was *really* free, and one day I hope to return to live there as a truly free man. Of course, sometimes one might be mistreated there, but overall they're unbiased, so long as you speak the language like a Parisian!"



Mary- Ellen and Sam both began to teach me about the realities of being a black man in a white man's world. I learned the basics of cooking in the cramped galley of the ship, and how to wait properly on passengers. My two friends showed me how to lower my eyes and shuffle around white people, and always to wear an inane smile in their presence. They drilled me in the importance of trying never to appear too clever, or answer them back. I also watched Sam tread a fine line between good humour and insolence, between respect and servility, and tried to copy him.

Finally, the day of being tested came.

My brother and his friends learned that I was spending time with the mysterious woman in the state cabin. As I served these American oafs meals, and put out clothes, their hints became questions. The unanswered questions became jokes between themselves, in which they discussed me as though I were not there. The first jokes had been about Sam and me. One of Allan's friends commented, "Allan, I guess your slave's given up his pretension of being family, and is learning how to earn an honest living as a sailor-boy".

Not to be outdone, Allan replied, "Yes, but he forgets that when Father dies, I have a special place for him picking cotton".

Or, "Allan, I see young Jonathan is learning how to grunt in tune with his new friend. Do you think that they're planning a new minstrel act?"

Finally, the comments focussed almost exclusively on the woman I frequently visited, and all alluded to my sexual prowess. These remarks made me so angry I could not keep quiet.

Sam suggested that we simply go to their cabin and fight the entire group. He had no doubts about our ability to thrash them all. I told him I'd let him know, after asking Mary- Ellen for her advice.

I didn't have to tell her much, before she held up her hand. "They talk about Sam, and blacks having no intellect, or our music, and finally, inevitably, about our sexual skills. Right?"

I started to reply, but she held up her hand again. "And you get angry?"

"Furious".

"Well, what you have to do is not get angry. You don't have to actually say anything, just look stupid. Whistle and sigh, but don't say anything. Scrunch up your eyes, and look confused. If you have to say anything, make them wait before you do so. Make them wait a few minutes. Even if you are furious, learn not to show it. It will only make it worse. Most important, don't try to justify our relationship, or protect my reputation. Come here."

I got up and went to where she was standing. "When they are laughing at you, bear this in mind". She moved into my arms. We made love in a frenzy of passion, anger, and bitterness. We made love all afternoon, on her comfortable bed, in her state cabin.

Afterwards she said, "Come back and we will do it again. Anytime you want to... When things get bad with your brother and his friends, ask yourself how much they would give to have even the chance to do what we have just done on this ship. Or ever. It's enough to make anyone laugh."

And it worked.

## CHAPTER FOUR

I was surprised at how easily I slipped into and out of the new persona created for me by Sam and Mary-Ellen. I consciously adopted it after leaving Mary-Ellen's cabin. I tried to calm myself by remembering the most erotic encounter of my life, as well as anticipating with relish the ones which I knew were to come. I could easily fall in love with her, I thought, as I set off to fool my brother and his friends. I was then a happy and contented man, instead of a resentful slave who went to Allan's cabin to set out his clothes for the evening.

The comments of his friends quickly followed. When they joked about the mysterious woman in the state cabin, I tried not to react angrily or deny their accusations and jibes. Most times I taught myself to smile a vacant smile. Sometimes I rolled my eyes. Occasionally I hummed a nonexistent tune, or sounded another tune in a combination of a whistle and air blown through my lips. Such inarticulate sounds were usually accompanied with a selection from an array of gestures. For example, the head could simply be hung at an unusual or unnatural angle, or tilted forward while I observed the group of adversaries as though I were watching them over the top of a pair of imaginary spectacles, like a chiding schoolmaster. From time to time I added an absent-minded scratching of the head.

I gave them what they expected. I tried not to argue, or fight back, teaching myself to resist mentally, and only to fight back in the sanctuary of my mind. This way, I learned, I gave them nothing to criticise or take offence at, yet somehow I maintained my own integrity.

My brother seemed mystified at first, but the more I adopted the role, the more he seemed to relax, and become a member of his friends' pack. He began to make my life easier by treating me as a servant, not as the usurper. I began to make things easier on myself by learning not bristle. I tried not to think of myself as related to Allan in any way. I began to

enjoy deceiving this bigoted buffoon, who just happened to be another son of my father. Too bad for him that I had all the brains! As for his friends, what could one expect from anyone who would willingly spend time with Allan. But there again, perhaps that was the social standard of people from Kentucky! At one stage I laughed out loud as I realised that I was thinking more and more of him as 'my enemy' and less of him as 'Allan' or 'my brother' - for two people can play at the game of depersonalisation.

Needless to say, these changes did not come at once, but over the course of time.

Sam's attitude did not change toward me and, if he knew or suspected that Mary-Ellen and I had become lovers, he neither indicated it nor commented on our relationship. Forever fixed in my mind is the memory of his bulky form pirouetting around the small galley, in an amazingly graceful way, as he showed me how to cook a surprisingly wide range of foods in the cramped space. As we worked together that day, and while we shared a meal after we had cleared the galley together, I told him about my change in tactics, and continued, "I think it might work, if today is anything to go by."

Sam surprised me with his perception. "What brought about the change in you?"

Though I didn't want to disguise my relationship with Mary-Ellen, I didn't want to flaunt it, nor seem to be boastful about a relationship which I knew was going to be vitally important to me. "I had a long serious talk with Mary-Ellen this afternoon, and she showed me how to change my attitude. I realise that no purpose can be served by arguing with people who are not interested in hearing my point of view. I took her advice, and it worked. I'd like to learn all I can from both of you." I could see that this pleased Sam, who grinned, and promised, "By the time we're finished with you, you won't know yourself". We were silent for some time, before he turned to me again, "It's hard to change, isn't it? I mean it's real hard to

have to take control, but we have to do more. We have to make it seem that we are not taking control. We have to learn how to sneak around. Lie. We can't afford to act like they say men should act. But one day..."

What could I say? That I hated the changes that were now forced on me, even though I had always looked forward to taking control. I couldn't even cheer him up by saying that making love to the woman you loved was enough. I couldn't say that for certain.

When I was able to get free, around 9 o'clock that evening, I went to see Mary-Ellen. I was somewhat fearful, because I wanted to say and do the right thing, but my talk with Sam depressed me. Mary-Ellen returned my kiss coolly when I entered her cabin, but I was taken aback when she moved away decisively, and motioned for me to sit opposite her.

"How did it go?"

I told her how surprisingly easy it had been. She nodded her approval.

"I've been mulling over how to say this, and it is not easy for me after this afternoon. But I have to say it. I had a wonderful time." She smiled, then went on, "I think you are a handsome and cultured man, and as I liked making love to you, I hope to repeat it, at least as often as we can during this voyage. But I am not looking for another husband, because I've already buried one, and my present one is in San Francisco, looking after our business there. I just barely escaped with my life in New Orleans, and I like to relieve the tension too. So here we are! I don't want to have you fall in love with me, to be like a lovesick calf around me. But I would treasure your friendship and trust. And your loving."

I was at once aroused and appalled. I wanted to take her without any more conversation, but I knew I would have to resolve the nature of our relationship. So I sat back, and tried to not to be angry.

I told her how flattered and excited she had made me. It had not been my first time, of course, but nothing could compare with it. I confessed that I was beginning to fall in love with her but that it was not my way to have affairs with married women. I was confused. I had never met a woman like her before.

She spoke again of her childhood, and her desolation at the separation from her mother, while she remained to work in the fields of her master's house. "Because of my mother's bad attitude I was never in favour like some of the other children. I had to work in the fields, while the popular ones played around the overseer's or master's houses. But I knew how to put fear into the others because I told them that mammy had taught me everything she knew about magic, and that I could and would survive by using it." She shuddered as she remembered. "I didn't really know much, but mammy said to try to be noticed by some visiting stranger, and get taken away to be a white man's mistress when I got older. One day, when I was about fifteen, I noticed a stranger passing, and quietly went to open the gate for him. He was a Cuban plantation owner from West Virginia, who took an immediate liking to me and paid five hundred dollars for me. He took me to a convent in New Orleans for me to be educated. I learned very quickly."

Fortunately for her, the Cuban was an active member in the abolitionist movement, who had freed his slaves, and allowed them to work for wages on his plantation, managed by a black 'agent' or manager. At that time, he was also happily married. Mary-Ellen went to work for him as a cook and housekeeper and shortly, after his wife died, she married him. Everyone assumed that she was Cuban like her husband. "For three years we worked all over the south for the movement, and I became useful as an agent who would visit plantations and speak to the slaves. Sometimes I posed as a small man, a jockey, and stayed near slave quarters, and could talk to them about escape to the north. My husband died suddenly, and left me all his

money to continue the struggle. That's what I do now. They've been looking for the jockey for a few years, and nearly caught me a few weeks ago. So I'm going back to my boarding house in San Francisco, to take a rest. My husband manages things there for us; he is free to do as he wishes, and I am free to see anyone I choose."

By the end of her story I was more in control of my feelings. I had heard of such *laissez-faire* marriages, but they had never appealed to me - until now. I decided that I really wanted to get to know this woman, to learn whatever I could from her, under whatever conditions she chose to apply. I vowed to myself that, whenever possible, I would help her in her struggle. If I couldn't marry her, I would take whatever she offered. I told her so, and we retired to her bed for the second time that day. To my great surprise it was better than the first.





## CHAPTER FIVE

As the voyage progressed, I practised and grew more familiar and comfortable acting out my new character for Allan and his friends, while I tried to understand who I really was. I had lived all my life in my mother's house, except when I was in France, but I was always a slave in my father's house. My father's wife had insisted that I 'learn my place', by which I think she really meant that I should learn to be a slave, and be totally servile to her family. My father had other ideas, and would stand for no interference from her, insisting instead on raising me as he chose. He was always fair and kind to me. As a result it had not been necessary at home for me to play the game which I was playing now. I did not have to pretend to be different from my 'real' self, or to act as though I were stupid or, worse, subservient. I had always been able to speak the truth to my father, and had never been forced to disguise my real thoughts or intentions, even in France. But now that I had left his protection, things had changed. I had to learn to be vigilant, especially when I was relaxing.

I had left behind me in New Orleans and Paris the luxury of being simply myself, a luxury which I could no longer afford.

In my new situation I had to plan for the future too. Even if I did go prospecting with Allan and his friends, I did not expect that it would last very long. I was not prepared to assume the role of a jester to this bunch of boors for any lengthy period of time. I would have to work out what I was going to tell my father in my first letter, so that he might be prepared for any sudden changes with respect to my remaining with Allan. I knew by both intuition and experience that I would not stay with Allan for six months: if I tried, I was sure one of us would end up dead.

One evening, as we got closer to Changres, where my party would leave the ship, I shared these problems with Sam and Mary-Ellen, as we sat comfortably in her cabin. Sam was very concerned that I might place too much trust in Allan, "Don't forget that California is not a slave state yet. But remember that we have no rights. The whites may try to imprison you, but legally they can't enforce slavery laws there - yet. You have to watch out for some of the judges though. A white person can beat you up and steal from you, and you will only waste time and energy complaining about it. The law cannot be trusted to protect those who are not white. There are many free blacks in San Francisco, so if you want to take off, they'll help you. Mary-Ellen has good contacts there, but she'll be a few weeks arriving. But go to a black stranger in preference to a white man. And don't forget that there are roving mobs who will string you up before they even think about it."

I was now sure that Sam knew of my relationship with Mary-Ellen, but he never asked about it, nor let on that he had guessed. "We're going on - around the tip of South America - and then to San Francisco. I hope we've started you thinking like a black man. I can see how smart you are, but try never to let one of *them* know you can read or write, you'll get a lot further in life if you act like a dumb black, and not some uppity half-white man. It only gives them cause to hate you more. I can be of help when I get to San Francisco, but maybe Mary-Ellen might be able to give you the name of someone who could help you in an emergency."

Mary-Ellen quickly agreed to help. She asked, "How are the cooking lessons coming along, Sam?" I had told her that things were going well in the galley, but she kept Sam actively involved in this conversation by asking him for his opinion. So far as she and I were concerned, we both knew she was demonstrating for me how to dissemble. She did it magnificently. Sam replied that he thought I could get a job as a ship's cook and, with luck and good contacts, might even get a job in one of the busy restaurants in San Francisco where

I would be less noticeable. The huge man was deep in thought for a few minutes, then he surprised me, "Is cooking good enough for you? With your education, there must be other things you can do. Tell us about what you did in your father's house".

"Well, beside learning to be a house servant, I learned book-keeping, and because I can speak French very well, I sometimes translated for Father. I learned how to keep a wine cellar properly, and re-order house supplies, and supervised the other servants. Most of the time I did what I liked. When I went to France, I lived with the family of one of my father's friends. There I learned more languages, and spent six months in London learning how to run a trading company in which Father was a partner. After a year at home, though, I have been packed off to act as Allan's slave in California."

"Well, that just goes to show how far you can trust them. But, Man, if you have to be a slave, that's the kind of slave to be," observed Sam. "I was born and raised a field-hand, and all day long I had to do what I was told. So did my folks. No wonder your brother's jealous of you - you had a better life than him!" This comment was punctuated with a huge laugh.

I had never thought about this before, and it occurred to me that Sam might have understood the situation realistically. Strangely, I was beginning to enjoy cooking, and for now, that is what I wanted to do. Then I even surprised myself when I heard myself say, "I'd really like to see what gold-mining is like, I've never *had* to do hard physical labour before. Maybe it is something I need to learn, as most slaves have to work as labourers sometime in their lives. Who knows, we might strike gold."

Mary-Ellen interjected, "And if you do, your brother the white man will take it all. Seriously, if you ever get rich, bear that in mind!"

Sam and Mary-Ellen both seemed surprised by my desire to become a miner. After a moment or two they both had to agree that it was as good a way to earn a living as any, at least

that is what Allan and I had left home to do. I thought about my father, and that for his sake I owed it to him to try to get along with Allan for a while in spite of my misgivings. If I tried and failed, I thought I would be able to explain to Father that I had at least attempted to carry out his wishes. Frankly, I didn't hold out much hope for brotherly love.

Mary-Ellen seemed to guess my thoughts. "If you need help before Sam and I arrive in San Francisco, mention my name at the Atheneum Saloon on Washington Street. It is a black bar, and above it there's a sort of black Mechanics' Institute called the Atheneum Club. If you have any serious problem with your brother or his friends, and need to make a run for it, or even if you need to get away for just a few hours, they'll give you a warm welcome. Most of them know me - I used to be the cook there."

Somehow I had not imagined Mary-Ellen making a living, for I thought that her first husband had left her enough money for her to live comfortably without working. But I let it pass for the time being.

After Sam left, and we were still sitting, I asked her why she worked, and she laughed, "Honey, I have expensive tastes. Also, I work for the movement, and so I worked my way up to cook, but I also supply black workers to the rich and famous in San Francisco. Some of the grateful domestic servants would like to pay me, but I collect information from them, sometimes gossip, sometimes information about investments, sometimes about upcoming cases before certain judges. I'll show you how it works when we all get to San Francisco. But in a few days time, I'll be all alone on this ship," She pouted. "So let's make the most of it, before I have to go back to being a sensible, married lady of good repute!"

As usual, I carried out the lady's wishes, and was delighted to store the memory away for use when I was in less privileged circumstances, when I had to act out the role of the dumb black man.

Little did I think that I would have to play the role for so long.



## CHAPTER SIX

The voyage ended far sooner than I wanted it to and, after saying farewell to Sam and Mary-Ellen, I clambered into the small boat with Allan and his friends. This strange group of young prospectors and their grovelling black servant thus began their trek through the jungles of Panama. Intuition told me that I would be uncomfortable, depressed, and among bad company on this part of the trip. I was despondent at having to leave Mary-Ellen behind and, as I sweated in the small uncomfortable boat, I thought about how I was already missing her. Despite her warning, I was more in love with her than I cared to admit, even to myself. I sighed a lot on that small boat.

The heat and mosquitoes became a lot worse after we landed in Changres, and I then began to experience the hardships of being in the service of this group of unpleasant men. Allan began his Lord and Master act before we landed, giving me detailed instructions about organising porters to take us to our hotel. I then made a serious error by suggesting that it might be more appropriate to find a hotel first, then organise porters to bear our belongings to wherever that was. I realised as soon as I said it that I had made my mistake by offering this advice in front of his friends, who immediately began to jeer that I had more brains than my brother. Allan then refused to see reason and insisted that I do things his way. It was time for me to nod and whistle while Allan had his tantrum.

So I followed his commands, and very much later we arrived at our sleazy hotel, hot, tired, frustrated and irritable. I spent a sleepless night, angry and resentful at having to be here. I was miserable, as I remembered the pleasure I had enjoyed in the company of Mary-Ellen on the voyage – a pleasure as much of the mind as of the body. The heat was unbearable,

everything was filthy and cost a fortune. I was glad when I set out to find transport to Panama City so that I could begin to live like a civilised man again.

Though I did not realise it at the time, the nightmare trip was to be an important part of my education. I had always thought that I knew a lot about running things, but when it came to making the travelling arrangements for this group in a foreign land, I had a lot to learn. Allan became more stubborn as the difficulties increased, and I became exhausted merely getting things organised. I really wished that I could leave them stranded, but felt I owed it to Father to make sure that Allan - his only *legitimate* son and heir - did not perish in the jungle.

To begin, I arranged passage for the party on a native dugout dinghy. When I explain this expedition to my friends today, they usually assume that this was easy. But one must remember that we were in the tropics, and that there seemed to be thousands of such vessels on the river, carrying gold-seeking Americans to the Pacific coast. The ensuing chaos of shouting voices endlessly arguing in Spanish and/or English; of crashing rowboats; of perilously rocking dinghies; of passengers falling into the river, and their flailing to reach the safety of the shore or somehow escape real or imagined flesh-eating creatures was like a scene from Dante.

By the second day of the trip, after another sleepless night in a filthy shed optimistically called an hotel, the crew indicated that they were too tired to go on, and refused to do so unless we all helped them pole the boat through the jungle. As I was the only one in the party who spoke Spanish, I had to break this news to Allan. He was unsympathetic, and simply refused on the grounds that "I didn't pay good money to row the boat myself". I pointed out that unless we helped, we would be stuck in this hell-hole indefinitely. So eventually we all



took our part to help the naked Panamanians pole the boat through the mosquito-infested swamps to Panama City.

On another night we all - passengers and crew - slept in the boat tied-up to a tree on the bank of the river. Arriving at a hotel just after dawn, we breakfasted on greasy eggs, beans and coffee, before continuing along the tropical rivers teeming with wildlife and other dugout boats. These boats jammed the river, and they frequently stopped while collisions were sorted out, and narrow ways were cleared for the continuing stream of small vessels. We completed the trip in four days, and found hundreds of other hopeful travellers competing with us for space on a ship to take us to San Francisco.

After two weeks in another dingy hotel in Panama City, Allan and I finally found space on a small sailing vessel. Allan was forced to pay four hundred dollars for each of us for deck space on this overloaded boat. Thus we made our way to San Francisco as deck passengers in two weeks. This was a stroke of good fortune for me, as Allan was forced to leave his party of friends behind to find their own way to join us on the gold fields.

I used the two weeks during which Allan and I were forced into intimacy once again to try to develop a working relationship. I sat with him on one balmy evening, as we watched the beautiful night sky. I raised the question that was uppermost in my mind, "Is there some way in which we can work together effectively, so that we can make this voyage enjoyable to us both?"

"I thought you had a most enjoyable voyage thus far. What with mysterious lady friends and gigantic black protectors." His scarcely concealed anger underlined his sarcasm. "But I too can report on *your* activities, and will be sending this off to Father, as soon as we get to San Francisco." He took a large envelope from his pocket and brandished it threateningly at me.

“Your threats are no concern to me, Allan. No matter what you say, I plan to do my best to carry out Father’s instructions. I intend to do the best I can, despite the taunts and spitefulness of you and your friends. After all, whom can you trust more than your brother?”

“Or in my case, a *half*-brother. A barely human one with polluted and diluted blood in his veins! Here’s my advice, for what it’s worth, Jonathan. Trust no one! Follow my example, put yourself first.”

“Thanks. Let us agree that we are both embarrassed by our kinship. Thanks, too, for the very good advice you have just given to this creature. Will there be anything else you require before you retire, sir?”

## CHAPTER SEVEN

San Francisco.

Looking inland, the human hustle and bustle before me brought back memories of ants scabbling over a pile of debris. Seen from the sea this city was not even in the same league as New Orleans. Looking out to sea was an entirely different matter, and my home town could not present the stunning natural setting offered by the Pacific coastline. Looking seaward, beyond the bustling shanty town and crowded docks, I was confronted by a breathtaking harbour filled with deep blue water. The hazy blue coastline provided a beautiful border to this remarkable scene. These marine views offered new unknown opportunities, opened new horizons.

It was into this ugly beautiful city that we finally docked, and checked into a boarding house for a short stay before moving on to the gold fields. With his usual thoughtfulness, Allan booked us into separate rooms, so we could each be alone, sleep, and write our respective letters to Father. I wondered if he would find much difference between them when he came to read them. For myself, I stated that Allan had informed me that he was sending a report too, but did not raise the question of his likely truthfulness. I would let my father draw his own conclusions. I thought it important to refer to my new friends, and mentioned that they had successfully made me aware of my own ethnic identity. I indicated that I had started to learn what it was to be black, and how to work out that reality in my life, and particularly in my relationships. I told him Sam had taught me how to make a living as a cook at sea, should that ever be necessary. I assured him that I had not spent much of the cash he had given me.

Finally, I reported that, so far as I knew, Allan had been careful about how he spent his money. That in my opinion, he was acting responsibly, even when he was around his friends.

I did not mention my new strategy for coping with Allan and his friends: after all, we all have our pride.

While we were in the city, Allan and I had a tacit agreement that he would spend his time in whatever way he wanted, in private, and that I would be free to do the same. I'm fairly sure that he went to find female company. If so, who could blame him?

I went to the Atheneum Saloon. The restaurant and bar that Mary-Ellen had told me about was on the lower floor of a two-storey house in Washington Street. I entered and ordered a beer, enjoying the relaxed atmosphere of the restful and comfortable surroundings. After the long and tedious trip I enjoyed the opportunity to be alone, in friendly surroundings. All of the patrons were black and, though the presence of whites had been normal for me at home, I felt strangely more comfortable here. One never knew in a small town. I ate a leisurely home-style meal, and enjoyed a little wine. I moved away from the restaurant to enjoy a cigar and brandy. Naturally, I got talking to some of the other customers, and they were polite enough not to ask me any personal questions. It was as if we had an unspoken agreement to confine the conversation to generalities like the weather.

After an hour or so, I began to feel restless, and one of my companions asked if I had ever visited the Atheneum Institute, a self-help organisation, located above the saloon. He took me upstairs to look around, and I went off to find out about membership. In the tiny office I met a middle-aged, distinguished looking man, who said in a friendly way, "I haven't seen you here before, have I?" I explained that I was new in town, and was interested in finding out more about the Institute. The man introduced himself as Peter Adams, a Methodist pastor, and he took time to show me over the Institute. After looking at a few small classrooms, we stopped at the library, and I said I would like to see if there were any newspapers from home. When Peter asked me where home was, I replied without thinking,

“New Orleans”. Then kicked myself as I spoke. I had not wanted anyone know that I was my brother’s slave, so did not want to give anyone details of my personal life. I suppose the kindly minister sensed my reluctance to give any more personal information, so he left me to get the latest news from home, assuring me that he came there frequently, and offering help, should I ever need it.

San Francisco seemed to be providing Allan with the kind of company which he sought, but I asked no questions, and he offered no information or explanation about his activities. The next day, however, he said that as we were not yet equipped to begin prospecting, he planned to remain here for at least a few more days. I was happy to stay, as I wished to visit the Atheneum Institute again, and meet some more people there. I had learned that there were a number of successful black businessmen who attended the club, and I thought that if I were ever free of Allan, they might be useful friends. That night I asked Peter to put me in contact with some of them. Mifflin Gibbs and his partner Peter Lester who owned their own store were in the library, so Peter Adams introduced me right then and there. We moved across the street to a small café, and over a cup of coffee I asked them about their experiences as black businessmen in San Francisco.

“It’s never easy for Negroes, “ replied Gibbs, “but we are able to provide quality clothes at a fair price, and there are a lot of Yankees prepared to do business with us. Things have improved so much that we are thinking of opening a boot and shoe store.” “The main problem is that people either steal or refuse to pay for what they buy, and we can’t take them to court, because California law stops us from giving evidence in court, even under oath,” said the somewhat more cautious Lester. “Sometimes I wish I looked like Leidesdorff,” he continued with a laugh. I had no idea what Lester meant. Gibbs noticed my puzzled look and asked “You do know the story of Bill Leidesdorff?” I did not, so Lester continued the story.

“He was born in the West Indies and, though he had a black mother, his father was Danish, and young Bill looked like a white man. He became a seaman, and after he moved to New York, and worked his way up until he became a captain. He was a natural businessman and he eventually scraped up enough to buy a small trader on the Indies run. Then he came around the Horn to the west coast, and ended up in San Francisco about ten years ago. In two years he had three more traders, and owned half of the city. He was the first trader to own a steam-powered vessel, the *Sitka*, and then was elected to the town council. President Polk appointed him American vice-consul to the Mexican government here in '45. He died in '48, and was given a public funeral. Then his lawyer had to go to the West Indies to have his mother sign probate papers, and that was the first anyone knew that he was black. Man, the city politicians tried to keep that quiet,” he laughed. “Apparently, the only mistake he ever made was to tell a New York belle that he was black, and she decided not to marry him. That’s why he came west.”

“Why don’t you come to our Wednesday night meeting at the Institute, I’ll introduce you around,” said Gibbs. “Maybe we can teach you a little of what we’ve learned about survival. After all, you might be able to avoid making the same mistakes we have. When I first came here I had to work as a bootblack, and I learned a lot about staying alive.”

The next evening I learned about bootblacks for myself. At about eight o’ clock I walked along a busy street, anticipating a meal in one of the popular restaurants in the area. After a few minutes I heard loud shouting from a growing crowd of people on the opposite side of the street. I crossed over to find out what was going on, and hear the argument more clearly. One man shouted in English, the other in French.

“This is the third time you’ve stolen a customer from me,” said a furious black man who was clearly ready to fight the smaller but equally angry white man who replied in French,

“I haven’t eaten in three days, and you have been doing four jobs to my one. Isn’t this a free country?”

As I looked more closely, I noticed that the two men were boot-blacks, and that they got more angry and frustrated because they could not understand each other. I stepped up to them, and spoke to the white man in French “Speak to him in English, or he will soon start hitting you”. To the black man I said quickly, “I can speak French, cool down, and I’ll help you sort it out before you get arrested”.

The Frenchman shrugged, “I don’t speak very good English”.

So I ended up translating for them. First I suggested that we move away quickly, before someone called the police. In a moment of rashness I promised that I would help them sort out the problem.

I managed to steer them around the corner into a quiet street, trying to get them to trust me enough to let me broker an agreement between them to work different areas of the street, and not to poach each other’s customers. Grudgingly the black, a runaway slave named Isaac, agreed, but wondered aloud, “Why is a white man doing a black man’s job?” I assured him that I would try to find out, and talk the Frenchman out of working as a bootblack in future. I gave Isaac a dollar, and turned to the Frenchman, “So, you haven’t eaten today?”

“No, not for three days.”

“If you’re not too proud to let a black man to pay your bill, I’ll buy you a meal at a good French restaurant I know. It’s just around the corner, and it will give me a chance to use my French again.”

“I’ll gladly do that, and even pay you by cleaning your shoes!” replied my new friend.

In the small but expensive *Chez Paris* restaurant nearby I learned that his name was Pierre. He had landed three days before from a French ship that had sailed directly from Le

Havre. "Why didn't you bring some money to see you through the first few weeks here?" I asked. Pierre laughed when he replied, "No one in France will give a job to a revolutionary".

"Didn't you have your revolution in 1789?"

Pierre seemed surprised that I did not know about the uprisings of February and June 1848. "I thought it was universal knowledge that even Paris was threatened by the forces of democracy", he said acidly. Then, perhaps remembering that he was my guest, and savouring the fine red wine he was drinking with his steak, he grinned. "But perhaps you were occupied in the fleshpots of the bourgeoisie?"

I found myself liking this particular revolutionary more and more, so decided to turn the conversation into a game of one-upmanship, and retorted, "Yes, that was a busy year for concerts and opera in New Orleans". Then, not pausing for Pierre to reply, continued, "I still don't understand why revolutions in 1848 should cause you to land here without money in 1851".

Pierre explained that he had been imprisoned for two years, and how he had been lucky to evade banishment to the Isle of Pines in French Polynesia. "When I was released from prison, I washed dishes in a Paris restaurant, and worked without pay for a photographer, in order to learn the trade. When I had learned all he could teach me, and as soon as I had my fare to San Francisco, I came here. I thought there was gold on the streets." He laughed wryly. "When I landed three days ago, I met another Frenchman on the street, who sold me his equipment and polish, so I started cleaning people's shoes. But, as you saw, all I did was make enemies instead of money."

We talked as we ate, and enjoyed a fine meal. The restaurateur himself brought the bill, and we shared a joke. As I was paying the bill I asked, "My friend used to wash dishes in Paris



- do you know of anyone here in the restaurant trade who needs a dishwasher? I must warn you - he doesn't speak much English yet. But I think he would be a high-class dishwasher."

The owner of the restaurant turned to Pierre and said, "If you can start tomorrow, you can work in my kitchen". The young man agreed and arranged to start the next evening.

As they left, I asked if he had a place to stay, and said in response to his negative reply, "If you come with me, I might be able to sneak you into my room for a night or two".

Two nights later Pierre was settled into his new job, and had rented a room close by. I stopped by the *Chez Paris* and had a late night snack, before heading back to my room.

As I made my way back to the boarding house, I thought how much I had changed since I started this trip, and was surprised at how much I was enjoying my independence. Then I thought about Allan waiting at the boarding house, and became depressed. Was it wrong for me to wish myself rid of him? I assured myself that it was more wrong to keep slaves, and that all men wanted to be independent and free. No matter how I tried to look on the bright side of things, by the time I got to my room, I seemed to have lost my verve.

I became even less enthusiastic the next day, when we boarded the ferry which would take us to the gold fields. Allan immediately made friends with some other slave owners who were travelling to prospect for gold. I stayed in our cabin, and made no attempt to explore the boat after I had tried to order some food in the dining room. The staff were clearly embarrassed that I should even think about dining in civilised company. The head waiter came to my table as soon as I sat down. I asked for the menu and wine list, but instead of going to fetch them, the waiter cleared his throat, and in a self-conscious but aggressive way, hissed "You cannot eat here!" This surprised me, so I inquired why not. "Your kind get their food directly from the kitchen." I saw his confusion, so I took out my wallet, and showed him that I carried cash. "I want to eat here, and to have some wine with my meal."

He spoke louder. "You can't eat here, and you can't get wine. You must leave now." By this time some of Allan's friends were asking what the problem was. I began to get angry, and just as I was about to argue my case, I remembered.

I smiled and whistled through my teeth, "Yes Master! Sorry Master!" Then got up with as much dignity as I could summon, and left. This made the waiter happy, and also Allan's friends, who cheered him loudly before tipping him. I felt humiliated, and wished that Sam were here. As I walked through the glass doors, a small middle-aged man followed me out of the dining room. "It's disgraceful, my wife and family were appalled by the way he treated you! If you will give me your cabin number, we'll be happy to bring you a meal. In about half-an-hour. What would you like us to bring?"

I no longer felt hungry, so I thanked him, and asked just for a sandwich and glass of milk. When he came to my small cabin, he introduced himself as Dr. Prentice from Boston. He was heading inland with his wife and fifteen-year-old son to Sacramento, where he hoped to open a practice. I thanked him profusely and said I'd look him up and let him know how I was getting on, in a week or two.

The following day we disembarked at Sacramento. To judge from his miserable expression Allan had a hang-over, but I knew better than to mention it. "Where are your friends?"

Looking even more miserable, Allan muttered, "They relieved me of two hundred dollars at poker last night. You are less expensive, so it seems I'm stuck with you for now."

With this happy thought in mind, we headed inland to mine for gold.

## CHAPTER EIGHT

We were, I think, both surprised at how well we worked together. We settled into a routine in which I did the more obvious physical tasks such as digging holes, as well as all of the domestic jobs such as cooking. When necessary Allan would dig for short spells to allow me to rest. He usually undertook the somewhat lighter tasks of washing the dirt that was extracted from our mine. It began to amuse me that in order to assert and demonstrate his ownership of me to the neighbours, Allan issued his constant orders with a military precision, in a loud voice. Then it began to irritate me. Then I shouted sarcastic replies, which Allan habitually ignored.

But most days were surprisingly relatively free of conflict. One thing that helped me keep cool was that I discovered how much stronger I was than the heavier-built Allan. With short rests I could keep digging for at least six to seven hours a day. But I must confess that, within a few days, I forgot my humble servant act, and went back to the bad old ways of childish squabbling. What really annoyed me was that I was expected to keep some semblance of cleanness around our shack, as well as to cook, and wash dishes. So we worked together, in a sort of uneasy truce.

The day that changed our lives began as usual for Allan, with an early wake-up call from me, then a leisurely wash and shave before he sat down on the doorstep of our tiny cabin to drink his first mug of coffee. While I cooked our breakfast of ham and beans, Allan observed the gold-fields around him in a relaxed way. I knew from experience that he always enjoyed mornings. While he took it easy, I looked over his shoulder at the scene before us, the hazy blue smoke rising from a hundred camp fires along the creek, as small and large groups of

prospectors began to cook breakfast; we breathed in and savoured the wafting smells of frying ham and boiling coffee.

After breakfast Allan lit up a pipe while he enjoyed the remainder of his coffee, and began to chat with a miner who had staked a claim nearby. I took care of the chores of washing dishes, before preparing food and drink for us to keep us going during the long day's toil. I then set aside the provisions for their evening meal, and took up the pick, placed its handle on my shoulder, and said to Allan in what I intended to be a mockingly submissive tone, "Ready, Master".

Allan disappointed me, for his only response was a languid wave of his hand, as one might brush away a fly, motioning me to get down into the shaft and start digging. He then complacently resumed smoking his pipe and continued his conversation. While surveying the surrounding California gold fields in his usual smug way, he awaited the first load of soil from the shaft. I was angry at myself for letting him get the better of me.

After digging for about a half-hour, I thought it time to shovel out some soil for Allan to wash out, and to see if we had hit pay dirt. As I shovelled, several bright specks caught my eye, but my optimism had deceived me before, so I said nothing just yet. When the hopper was full I yelled to Allan to haul it up, but before Allan started to wash the earth, I quietly warned him, "Take care as you wash it, I think I might have seen a bit of colour as I worked it". A few minutes later I was roused by Allan's excited shout, "Come and see this!"

I scrambled out of the shaft and ran to the creek. "Find anything?"

"Does this look like real gold?" Allan nervously touched the small flecks of colour that remained in his pan. I peered over his shoulder.

"Looks good to me, but just to make sure, let's get it tested right away." Mindful of the closeness of their neighbours, I said quietly, "Let's keep any news to ourselves, though".

Allan nodded agreement and muttered, "That's only the first shovel full - here put this in your container". Trying to look normal for the sake of anyone watching, I took a small glass vial from my pocket, and carefully transferred the gold to it.

Allan took the glass and placed it in his pocket. For a second I had a flashback to Mary-Allen's warning that I should not expect to share in any riches from joint ventures with Allan.

"While I'm having this assayed, you finish washing the rest of that dirt," he said, pointing disdainfully to the remainder of the pile at our feet. He sauntered away, while I resentfully turned to complete the task of washing the dirt. As I began to shovel the earth I decided then and there that if we took any gold from this hole in the ground, I would take and hide my share of it, slave or not. I relished the thought of the arrogant bastard left to his own devices, digging and washing his own dirt, drenched with sweat.

By the time I had washed away the pile of soil my mood had changed. I could hardly believe the amount of gold I now had divided into our new vials. One for me and one for him. One he would know about, one he wouldn't. I would have difficulty containing my excitement while we waited for the assayer's report. I knew that it would be one or two days before we knew the value of the gold. I was so excited I jumped back down into the small hole and started digging again, long before Allan returned. As I had guessed, Allan had taken a detour into the saloon, and he beamed at me as he weaved past my hole, opening the paper bag just enough to reveal bottles of bourbon.

"I think we will have some good news from the assayer in a couple of days," he winked conspiratorially to me. "Meanwhile, you keep digging while I think about how we'll celebrate." He didn't take long to revert from a happy drunk to a penny-pinching slaveholder, this brother of mine.

Thus it turned out to be a long but rewarding day for me, as well as for the fool who sat drinking his liquor in the shanty, while I did his work for him. Twice more I climbed into and out of the mine shaft, shovelling and moving earth to the waterside, where I washed it in the cradle, then shifted the residue into a much smaller dish, which I used to fine-wash the tiny specks of gold that were carefully stored – half for me and half for him. It was early evening and the light was quickly fading when I finally headed up the bank of the creek toward the tiny cabin that we shared. I saw smoke coming from the chimney of the cabin, and was glad that I would not have to wait until the fire got started before heating up our rough evening meal of baked beans. “Thanks for getting the fire going,” I said as I entered the door.

Allan grinned up at me as he poked the fire, “If that was real gold that we took out of that hole in the ground, I’ll do all the household chores from now on - to give you more time digging.” With his generous words ringing in my ears, I got the food ready.

After dinner, tired but excited, I had one drink of bourbon with my brother, before falling asleep in my bunk.

It was to be two days before we received the positive assayer’s report. During those days I continued to work the mine and collected enough gold to pay off the expenses that we had incurred on our trip. The rest of the gold I divided, storing the stash Allan knew about in a hole hidden under the pot-belly stove of the cabin. I kept my share of the gold in my pack, ready for a fast getaway, should I need it. We wanted no publicity, and nothing to do with any banks.

Then our luck changed – the gold ran out. We laboured for the next three weeks, but the amount of the precious metal we retrieved seemed to dwindle day by day. We hoped that, like some other miners, we would strike the seam of gold again.

We both worked hard all day on the Saturday of the third week after our discovery of the gold, and following our rough meal Allan opened a bottle of bourbon and pushed a glass of the liquor across the table to me. Taking a drink from his own mug, he said to me with a grin, "The boys sent me word from San Francisco that they'd finally got a ship from Panama. We'll get the ferry into town tomorrow to meet them."

That was the last friendly drink we shared.

The next evening, when we arrived in San Francisco, Allan went off to meet his friends, while I went to visit the Atheneum Club. Allan and I agreed to meet the next afternoon at the boarding house where we had previously stayed. I sensed that he wanted to be rid of me; I certainly wanted to be rid of him to find out if Mary-Ellen and Sam had arrived.

When I arrived at the Club, my old friend Sam was there. He was staying with friends nearby, and we gulped down a congratulatory beer before heading there. Safely in his room, we started to catch up with what had happened during the past few weeks. "How is Mary-Ellen?" I tried to ask casually.

"Shacked up with her no-good husband. I don't know what she sees in him." Sam tried to reply casually too, but I could see that he was concerned.

I said nothing more about the matter. "Guess who struck it rich three weeks ago" I asked, then answered my own question, laughing, "One man and his slave".

"Did he give you any of it?" I looked at Sam, with a grin, "He gave me nothing and I expected him to give me nothing. So..." then, after a short pause, "before we left today I took my share." I pulled a large bottle of gold nuggets from my pack. We sat down and, after looking over my hoard, exchanged news over a drink, agreeing that I must be prepared for anything now that the rest of Allan's party had arrived.

We discussed the incredible growth of San Francisco, with ever-increasing numbers of Chinese, Mexicans and other nations arriving in search of gold. "There's even boat loads of ex-cons from Australia arriving every week," reported Sam. "Yeah. They call them 'Sydney ducks' and it doesn't pay to cross them. What's the most dangerous thing you can hear on the street?" he jokingly asked. I shook my head. "What news of Sydney Town?" said Sam in a fake Australian accent, and we both laughed at his mimicry.

They we got down to seriously planning what I should do with the arrival of Allan's friends.

Nothing we planned had prepared me for my confrontation with the drunken Allan the next evening. Allan simply told me that his friends had each paid him two thousand dollars to buy shares in the mine. "I've sold you to Jamieson for five hundred dollars. He can use you on his plantation in Natchez; he has a really good overseer to teach you how to be a field hand. You're no use to me. Five hundred is all you're worth."

"You can't do this. Father won't allow it."

"Don't even dare to tell me what to do. Free men don't even consider, let alone consult, *slaves*." Allan looked over the rim of his glass into my eyes. "I know that Father raised you as a white man, but just look at you - your skin is blacker than most of the other slaves I own. So just remember that while *you* may think that we are the same, and fool yourself that you have the same rights as me, the law says that I own you." We glared at each other across the dingy room.

I then started to surprise myself. "Allan, get used to the idea that this SLAVE allows no one - not you, or even Father, to speak to him like that. Now, I happen to know that the State of California does not yet allow slavery. Then, let me remind you that Father *did own* me.



I have with me a copy of the legal document Father signed just before you were enticed to transport this *emancipated* slave to freedom in the non-slave-holding state of California. Once upon a time either Father or you could hold me as a slave: now, I have the right to do anything I like, go any place I wish, like the 'free man of colour' which I now am. You'd better give that five-hundred back to Jamieson, and from now on, you can dig your own holes, you evil son of a bitch!"

"Well, all of that can be undone... "

"Not even Father can undo that, for even someone with as poor a mind as you must realise that these legal documents drawn up and signed before we left New Orleans gave me my freedom, together with a half share of any fortune that we might make in California, if I came west as your companion and partner."

"You'd have to prove it in court, and so you *will* be my slave until a court frees you. Also, my friends are here now, and we will place you, under armed guard if necessary, on a ship returning home tomorrow. I'm sure that all of us can control you. And just in case you think that you will run away and refuse to return to New Orleans - remember that there are men called bounty hunters to run you down and bring you back to your owner. Me."

Bitterness and hatred overwhelmed me. Without thinking, I rose and stood over Allan who sat slumped in his chair. I heard myself speaking in slow, measured phrases. I spoke with a threatening clarity, but in reality I could barely refrain from attacking him. "I'm not your slave, and never will be. I have friends too." I found myself punctuating my remarks with my forefinger, which repeatedly struck Allan in the centre of his chest like a black bullet, with such force that he could not rise from the chair. "If you, or your friends, or your so-called bounty hunters ever come looking for me, I'll kill them, then I'll come and kill you myself. And don't

worry, I'll also let Father know why I've left you, and if I ever do have to kill you, I won't do it behind his back, I'll write and tell him why. It will come as no surprise to him."

I turned and walked to the door, then went back and stood over my own brother, and said with a bitter smile, "Keep your share of the gold. You and your kind steal from black folk like me every day." As I left I wagged my forefinger like a pistol at Allan and warned him, "Don't make me come back and kill you".

Then I headed out the door into the soft California night.

## CHAPTER NINE

“One of the problems of breaking free, is threatening to kill your own brother!”

Late as it was, Sam had answered my knock on his door. He had been sleeping, and it took him a moment or two to make sense of what I said. Suddenly he understood, and the immense man beamed at me, as he realised the meaning of my words. Before I knew what was happening, he had launched himself across at me, grabbed me in a bear hug, and danced me around his tiny room. “I take it you didn’t really kill him?” He feigned concern and laughed, unable to contain his glee.

Ignoring the thumps on the wall, I sat down and thought about it. “No, but for the first time in my life I seriously wanted to. If I had held a gun in my hand, I would have pulled the trigger! My own brother. I’m a changed man!”

“You are. You have stopped trying to be a white man, and acted like a runaway slave, which is what you are. You have also stopped being his brother. He’s too stupid to realise what a good friend you would have made. Tell me everything about it. Carefully remember it all so that you can relish it for the rest of your life! Yes!”

Both of us found it hard to contain ourselves, as I told him every detail of my fight with Allan. After a while, we began to discuss what would happen if my brother seriously tried to force me to return to Natchez. We discussed the certainty that Allan would not give up his plan to kidnap me. We had to figure out if his hatred outweighed his desire to take every last speck of gold from that mine. How long did I have? Good question.

Next day we went down to the club, to see if Mary-Ellen had arrived yet. Fortunately, she had. She greeted me with a reserved warmth for which Sam had wisely prepared me. She

had made her position quite clear on the boat and, under the present circumstances, I would have met any condition she made to continue our friendship. Anyway, I was too excited about my news to worry about anything else but giving her full details. Like Sam and me she was very happy that I had broken away, and was even more delighted when I told her I had siphoned off my share of the gold.

“I told you so,” she gloated. “Mind you, it sounds as though the money he got from the sale of shares will more than cover his loss. Anyway, he’ll never miss what he doesn’t know about.” She suddenly grew more serious. “You never told me that your father had freed you.”

I spoke softly to try to take the sting out of what I was about to say. “Father and I deliberately fooled Allan, but I decided that I would never tell another living soul until I had told Allan face to face, in a state where he can do nothing legal to enslave me once more. I cannot express my ecstasy when his face revealed his anger as well as his hurt feelings when he discovered that his own father had betrayed him. Only actually killing my half-brother could have made that moment more enjoyable!”

“What concerns me is that he hates you enough to put aside any brotherly duty, and to plan to force you to return to Natchez, then to have his friend work you to death, by hard labour. If he hates you enough for that, he may well want to be there to enjoy the process of your death. By what you’ve told me, he also hates your father enough to kill his son, but not tell him that he had done so, until a time when he could inflict the most pain by revealing your death. Gold fever might delay him, but don’t fool yourself that he will give up on the idea because you threatened him. Soon he’ll be rich enough to hire a private army to come after you. Start thinking about going somewhere where you can’t be found!”

I remembered how clever this woman was, and how correct her interpretation of the situation must be. "I think I have a while yet. I want to sort out my funds, get everything worked out, before I do my disappearing act. Where's a good place to go?"

"There's a lot of folks heading up to Canada – it's not a long voyage on a coaster to make it to British Columbia." I quickly rejected that idea.

"I don't like cold weather! Anyway, it's too close to the border, if he has money to spend on private investigators and hit men." We continued to talk about options, but as none of them really appealed, we spent a few hours telling each other what had happened since I had left the ship at Changres. We had lunch, then Sam went to work while Mary-Ellen returned home. I wandered up to the Institute, and found a few old friends leaving a lunch-time meeting. Peter Adams was among them, so I stopped him and asked if he were free for a few minutes. Fortunately, he could spare me some time.

I briefly described my situation, and asked for his help. He was the type of minister or priest one rarely encounters. Never did he ask me if I were a Methodist. Not once did he try to convert me, although he assumed that I was a Catholic. He never openly pushed his religion, but nor did he try to conceal his own spiritual and religious convictions. What he could not conceal was his hatred for slavery, his compassion for all enslaved people, and his willingness to help any runaway slaves.

Like Sam, he beamed at me when I told him of my leaving my brother. "You're the second person I've heard about today who has taken this momentous step." Every word he said was spoken in the cadence and tones of a sermon. "We have just had a meeting to raise money in aid of William. The poor young fellow is only eighteen, and left the gold fields to escape his master and his friends. We are trying to collect enough money to pay a lawyer to defend him. He ran away two months ago, and since then has worked in the kitchen of the

Club. He's a personable young fellow, with lots of energy. He loves a joke, because he has been filled with the joy of freedom."

"Last week he failed to report for work, and knowing that he was reliable, we organised a search for him. We have friends in the white community, and they heard that Underwood, William's master, had him locked up in a warehouse, ready to ship back to Missouri on the first available boat. Like your brother, Underwood intended to sell the young man. Fortunately Underwood was spending his money in the saloons in the Long Wharf area, so it was easy to have him followed to the warehouse. We are trying to raise enough money to have a white lawyer prepare an affidavit for a *habeas corpus* hearing before Judge Morrison."

"How much do you need?" I interjected.

"We've raised one hundred dollars, but need another fifty as soon as possible. We want to pay a good lawyer to handle the whole case for us. It's cheaper to pay up front."

"If I can do it anonymously, I'd like to donate the fifty dollars." What better way could I spend some of Allan's money? Thus I became involved in William's case.

After Peter went on his way rejoicing, I went to see if I could find my old friend Pierre. It looked as though he had given up boot-blackening, for he was nowhere to be found at his old haunts. I thought he had gone to the gold fields, but decided to make one more effort to find him. That night I treated myself to dinner at *Chez Paris*, and was glad to hear that he still worked there. After the meal, I made my way to the kitchen, and we caught up on each other's news. I told him about the gold fields, and he was full of questions about the life there. He didn't seem to have gold fever, and I asked him why he hadn't made his way to Sacramento before.

“I’ve a good paying job here, and am making sure that I have a camera, and all the equipment I need to record the life of the miners. I don’t want to find myself on the streets shining shoes,” he laughed. “Another Frenchman gave me fifty dollars for the brushes and polish, and now I work nights and sleep days, saving as much as I can to enable me to take all the pictures I want.” Clearly, he was more interested in photographing miners than he was in actually mining. “Oh, I’m interested in finding my fortune, but what I want to do is make a name as a photographer in France,” he said wistfully.

“I might be heading up to the goldfields again, if you want someone to show you around.” He jumped at the chance. But I warned him, “There’s a good chance I may have to leave California, if my brother sends an army of bounty hunters after me, but I should know in a few weeks how matters stand. Can you wait that long?”

“I’m in no hurry to give up a good paying job, and I’m learning more English every day. I’m not in any rush to leave.” With this assurance, I headed back to Sam’s place to get a few hours sleep.

I bumped into Peter Adams the following day, and he asked if I wanted to join the group going down to the courthouse to watch Judge Morrison hear William’s application for release. Peter smiled. “We were able to retain Samuel W. Holladay for William. He is a very good lawyer, and is committed to our cause. We want to show the judge and the community that we support each other. If you were free to come with us, it would show your support for William.” I thought I was free to go down to the hearing, but it was that court case that was to have dramatic consequences for me..

There must have been about fifty of us at the courthouse – Sam and Mary-Ellen had come along, and we sat together near the front of the court. We got there early, and were glad

we had, for the room became crowded very quickly. Underwood and a group of friends came into the court, and found that there were only a few places left – not nearly enough to seat all his supporters.

“Marshal, there’s a bunch of niggers taking up our seats – I want them cleared,” the red-faced slave holder shouted to a tall, heavily built official.

“I’m sorry sir, but these people have every right to be here, and I cannot clear them. There’s another room across the hall in which your friends can wait until the case is finished.” He was clearly trying to be helpful.

“My friends may be called as witnesses – these people,” Underwood gestured towards us, “can’t participate in any way, so I want them removed. This is still a white man’s country. Somebody needs to show these niggers.” The fifty or so of us began to get angry, and half rose in protest.

“There’s no need to speak like that. This is a public courthouse, and the public is entitled to be here. Everyone who cannot be seated must leave.” It was at that stage that I noticed a furious Allan, standing and glaring at me across the room, while pointing me out to his friends. Things were looking ugly. I was glad to see the Judge, a large man, with a commanding voice and stare, enter the court, pick up a gavel, and pound the top of his bench with it. “Marshals, you will clear everyone not seated into the corridor.” He turned to Underwood and slowly raised one eyebrow. “You, sir, will sit down and keep silent. If anyone disturbs this court further, the Marshal will remove him. Now, let’s get on with this.”

Allan and his friends were forced to leave, Underwood subsided angrily, and we all settled down to hear the fate of William.

Holladay, William’s attorney, called his client first.

“What is your name?”



“William.”

“How old are you?”

“Eighteen, I think.”

“Where were you born?”

“Missouri.”

“When did you come to California?”

“My master brought me here last year.”

“When you arrived here, you were a slave?”

“Yes.”

“You worked as a miner?”

“Yes.”

“Who for?”

“My master, Mr. Underwood.”

“Tell us, in your own words, what happened two months ago.”

“I heard a lot about slaves taking their freedom in California. Mr. Underwood was getting tired of not making any money from the mine, and I heard him talking about how he could hire me out to a laundry, or another miner, and make money that way.”

“Did he ask you what you wanted to do?”

“No.”

“Go on.”

“Well, I spoke to some of my friends, and they said that I should take off. I could be forced to work harder, for no pay. If we found gold, Mr. Underwood would get it all. My friend said that there were lots of negroes in San Francisco who would help me. So I ran off.

I walked to San Francisco, and went to a club. I made friends there, and worked in the kitchen.”

“Did you like it there?”

“Yes, if I get free, I’d like to go back.”

“Go on.”

“Last Tuesday, on my way home, somebody came up behind me and hit me on the head. I woke up later, and found I was locked in a warehouse. Mr. Underwood came in later. He was drunk, and he beat me, called me a worthless nigger, and said he was going to send me back on the next boat to Missouri in chains. He said that would teach me not to run away. He said he would sell me, and that I would be sold off as a field hand. Next day he went out again, and I started to shout for help, but no one heard me. Two days ago, some of my friends came to free me.”

“Are your friends here?”

“Yes.”

During this questioning Underwood could hardly contain himself, but the Judge glared at him from time to time, and the beefy man subsided, waiting for his turn to come. He was so confident about the rightness of his case and the certainty of the law that he had not even retained an attorney. Holladay called him next.

“But I’m not his witness, I’m my own. Can he call me?” His face blazing, Underwood turned to Judge Morrison, who was clearly enjoying this case.

“Son, he can call just about anyone he likes.” He paused, then gestured to the official, “Marshal...”

Underwood was led to the stand, and sworn in.

“Mr. Underwood, do you agree with William’s version of events?”

“Well, yes, but...”

“Just answer the question, please, Mr. Underwood. Your turn will come later. So you brought William to California as a slave?”

“Yes.”

“He did not run away before you came here, then?”

“What do you mean?”

“He didn’t escape in any other state, on the way to California. You brought him here as a slave, and he worked for you as a slave in this state?”

“Yes.”

“May we see your proof of ownership?”

“I don’t have any,” Underwood spluttered. “He’s mine. I bought him fair and square in Missouri, Your Honour.” For the first time he showed respect for the Judge.

“What evidence can you then offer this court proving your ownership of my client?”

“Well, I...” He clearly had to think about what evidence he did have. “You could ask any of my associates here, they will all tell you that I brought him here as a slave.” His friends supported this assertion with a loud cheer.

Morrison pounded his gavel on the bench top. He warned everybody to keep quiet, or be thrown out. He turned to Halloday, “I take it you had something more official in mind, Mr. Halloday?” he inquired innocently.

“Indeed I do, your Honour. I believe the minimum we could consider would be a fully notarised receipt of ownership.” He turned back to the slave owner, “I ask again, Mr. Underwood, other than your verbal assurances, you have no documentary proof that you own William?”

“Why, you have my word as a landowner and gentleman.” A rowdy cheer erupted from the area where his supporters sat, while groans and laughter broke out around me.

Halloday pressed on, “But you do not actually have any papers or documents to prove your ownership of my client?”

“No, not on me.”

“That’s all I have for this witness, Your Honour.”

After Underwood returned to his seat, Holladay resumed his plea. “Your Honour, Mr. Underwood asserts that he owns my client. The facts of the case are that he is unable to produce any documentary evidence of ownership of this man. Therefore, I claim that my client was last week illegally detained by Mr. Underwood and his friends. Furthermore, my client was brought into California in bondage, and made no attempt whatsoever to escape, and did not take his freedom in any other state but California. I therefore assert that the National Fugitive Slave Law of 1850 does not apply in this case. If my client had escaped across state borders that might be another question, but as he asserted his freedom in the State of California, he cannot be considered a fugitive slave under the national law. There can be no question since my client did not cross a single state line in setting himself free. Now, sir, we come to the question of ownership of this so-called slave. The man who claims ownership can offer us no proof of that fact, other than his own word. I request that you grant approval to this petition of wrongful detention of my client, with costs, Your Honour.”

The Judge smiled benignly. “You’re a hard man to deal with, Mr. Holladay. What is your response, Mr. Underwood?”

Underwood had been receiving some free legal advice from one of his supporters, and clutching some hastily scribbled notes, he stood and declared, “Why, Your Honour, I’d be in

real trouble if he,” he paused and pointed an accusing forefinger at the squirming William, “had not, just a few moments ago, admitted that he was my slave.”

With a smirk on his face, and the cheers of his supporters ringing in his ears, Underwood sat.

Morrison banged his gavel again, and glared at the audience. He lifted a single eyebrow before addressing Underwood. “Sir, Logic would seem to be on your side, but I too must obey the law. In 1850 the California State Legislature passed a decree which has made it illegal for Judges – or any court for that matter - to accept the evidence or testimony of any Negro. Thus I cannot accept as evidence the statement which you claim William to have made. I therefore grant the petition of Mr. Halloday, and award costs to his client. Marshal, release the applicant. He is free to go his way in peace.”

Who could criticise us for cheering?

Outside the court we formed a group around the relieved William, and were laughing and slapping him on the back, when Allan and one of his friends pushed their way through the group, and stood over me. My furious brother simply spat in my face. Amazed, I started to wipe my face, as Sam immediately joined me. Before either of us could speak, Allan shouted, “I spit on you and your friends! Watch your back, because we have decided not to send you back to Natchez. We’ll take care of you – for good.” He turned to Sam, “And you too – big as you are, right here, as soon as possible. I promise you.” He turned on his heel and stomped off, followed by his friends.



## CHAPTER TEN

*c/o Athenaeum Institute,  
San Francisco  
July 28, 1853*

*Dear Father:*

*You will probably be surprised that I am writing so soon after my previous letter in which I informed you that Allan and I had gone our separate ways, following his threat to kidnap me, and after I had responded by warning him that if he attempted to do so, I would kill him.*

*I suppose that one should not be surprised if, having offered a threat, one had it thrown back in one's face. (In fact, even as I argued with Allan at the back of my mind I heard your voice cautioning me not to act too hastily.) But you know what I am like when I finally lose my temper! I had totally lost patience with Allan, blood relative or not. Anyways, I did not think that he would return the compliment quite so quickly – I felt sure that he would return to work with his friends extracting gold from their mine. Had I been he, nothing would have delayed my return to that potentially profitable little hole in the ground!*

*I therefore thought that I would have more time to properly settle my affairs, before moving on.*

*This was not to be, for I became involved in supporting an attempt to free a runaway slave detained against his wishes. The case succeeded, and caused shock and outrage among those who uphold slavery – perhaps the case has also been reported in your newspapers. I attended the courthouse with some of my friends, in support of the young man seeking to obtain justice as well as freedom. Allan was there, encouraging his slave-owner friend in his attempt to have what he considered to be his rightful property restored to him – to have his 'goods and chattels' legally returned to him in the form of a poor, scared, eighteen-year-old human being. (Though perhaps Allan would argue that I belong to a sub-human species!)*

*I did not seek Allan out to gloat over the outcome of the case, after the judge released the ex-slave. However, he and his friend were so enraged by that adverse decision that they forced their way to me, and*

*threatened me with immediate assassination.*

*I fear that an attempt may be made on my life at any moment, and am now in hiding until I can leave the country.*

*I had seriously considered returning home to see you in the near future, but that is now dearly impossible. There are a number of alternatives open to me. I could, as I think you would prefer, go up to Canada. There are also some ships here leaving soon for Sydney Town. Another possibility is to take passage on a ship leaving soon for France, or even for Britain. It depends on what shipping is available first, so I cannot really give you a forwarding address. Personally, I would prefer France, as I think it would suit me better than other, less civilised, more remote places.*

*Rest assured that I will let you know where and how I am, as soon as I possibly can. Naturally, I shall be discreet, as I realise that Allan is, and must remain, your heir. I do not wish to bring about a breach between the two of you. Therefore, I intend to 'disappear' for awhile, and thus leave you in a position where you can say that you do not know where I am with a clear conscience – you may even show Allan this letter if you wish. So I know that you will understand if there is some delay in my writing, and if I correspond via friends. Please try not to worry about me.*

*As I close I am thinking of our evening chats in your study. I have changed much since then, and wish I could describe to you in detail what I have witnessed and experienced since I left home. I know that I have changed a great deal, and that those changes – though sometimes painful – have been to my benefit. I look forward to the day that I may tell you these things in person. I would surely appreciate your wise advice at this time!*

*I pray that you continue in good health; so too Mother. Please pass on my love to her.*

*Your loving son,*

*Jonathan.*



## PART TWO

### CHAPTER ELEVEN

Allan's threat was made with such intensity and venom that I feared for our lives. I think we both did. Even Sam, whom I knew to be only too ready to react violently to any threat of aggression, was very subdued as we left the courthouse. The two of us made our way back to the Club, and sat morosely at a small table, reflectively nursing our beers. Suddenly, as I turned to Sam, I knew exactly what we should do.

"Those people intend to kill us, if we give them half a chance. We are not wanted here, in this city, or State, and despite kind judges and well-intentioned lawyers, those bastards and millions like them will take our freedom as well as our lives if we let them. Let's go somewhere we can be free. Do you want to come?"

"Tell me what you have in mind."

"Well, there are scores of ships at anchor in that bay, and a lot of them are about to leave for somewhere else. Some of them will sail today, some tomorrow, and some the next day. All we have to do is disappear from here, arrange our money, find a ship which sails very soon, and leave. We leave secretly; tell no one where we are going, so they can't come after us. Let's pick a place where they won't think of looking for us. Like France." I prayed for him to pick France.

No such luck.

"Don't speak the language. Even if I learned to speak it, I couldn't earn a living. Where else is there?"

"England."

"Too cold and wet."

"Canada."

"Too close to home, too cold." He suddenly grinned at me. "You're missing the obvious. Think of the other gold-rush. I happen to know that there's at least one boat out there leaving for Sydney, as soon as they have enough crew-members signed on. If you want to leave in secret, don't book a passage. Only a rich and spoiled runaway black would

do that. If you want secrecy, leave as a black cook, and no one will notice you. You book passage in a cabin, and you'll become the target of every bounty hunter in the business. Look at it in reverse, half the convicts of Sydney come here, but no one knows if they are escaped cons or honest citizens. What do you say?"

"I like the plan, and hate the idea of the place. It's half a world away. There's nothing there. No culture. Englishmen everywhere. No music, wine, theatres." But I knew that he was absolutely right about it offering the best chance of escape.

"So what. We don't have to move there forever. We are sailors. Sailors are expected to move around. You like digging for gold. We can do that. We might even make us some capital. Take *our* culture with us. Or take your little French pal, so you can keep up the language, and discuss fine wines while washing dirt. Maybe even drink some fine wines if you dig up enough gold."

His teasing made me laugh, and I began to cheer up at the prospect of taking Pierre along. I thought he would probably like to come with us. "Right, we'll do it as soon as we can arrange things. Let's see what we have to do." It was always easy working with Sam. He would find the ship, and arrange for us to sign on as cooks. "You arrange your affairs and finances, and contact Pierre to see if he wants to come. Just for the record, I'd really like him to join the party, and I think he'll be very useful to have around."

In twenty-four hours we had arranged everything. While Sam went to check on ships that might take us to Sydney, I went up to ask Peter Adams to look after my financial affairs while I was away. He knew the banks that dealt with blacks in San Francisco, and we arranged to visit them the next day. Then I went to ask Pierre if he would like to accompany us. He surprised me by accepting immediately.

Sam had been busy too, and had been signed on as a cook, on a small cargo vessel, which had been fitted out to carry passengers. The Captain had promised to sign me on for the other cook's job, if I went out to the ship the following morning. Sam had also discovered that there was a single cabin available if Pierre decided to come. As an experienced sailor Sam pointed out the practical advantages of one of our party travelling separately. "It will be expensive, but you have the money to pay for it. Pierre could book

passage, and carry any of our luggage for us, but he need have no connection with us, and thus provide a useful place for hiding you in any emergency,” he said pointedly to me.

By mid morning the next day, I had arranged my affairs with a bank, and given my power of attorney to Peter Adams. I then went for an interview with Captain Paynter, a reserved, coldly efficient Englishman, for the job of second cook. I explained that Sam and I had been shipmates on the *Falcon*, from New Orleans to Changres, and that we had worked well together. As soon as I knew I had the job, I went to see Pierre, and gave him the money to reserve a single cabin on the *Warwick Castle* to Port Phillip.

Two days later the old tub *Warwick Castle*, with us aboard, slipped out of San Francisco harbour bound for the antipodes. When I say old tub, she seemed to bob around in even the smooth waters of the Bay like a demented cork. Within a short time, many members of both the crew and passengers looked uncomfortable, and headed for a spare place to contemplate the horizon.

The ship was British, the Captain and officers English, while the seamen were drawn from around the British Empire. Most were from India, and spoke little if any English. Sam knew the type of food that they liked, and had arranged with Captain Paynter to look after their needs, since he had experience from previous voyages. I took over the cooking of food for the passengers and officers, and considered myself lucky. In addition to Pierre, there were a few passengers in single cabins, while a small company of music-hall entertainers occupied two four berth cabins, and the couple who owned the company and managed the group shared a luxurious double cabin next to the Captain.

One thing concerned me. The ship leaked everywhere, soaking passengers and their belongings.

The vessel had quite obviously been converted from an old cargo ship to one carrying passengers across the Pacific. Old hands including Sam tried to reassure us that once her new timbers had become waterlogged, the ship would float better, and not have to be pumped manually. This alarmed me all the more, for this was the first I had heard anything about manual pumping, and it brought to mind visions of unpleasant hard work, and life threatening dire consequences if we didn't pump fast enough. I soon found out

that most of the passengers not only shared my fears but were ready to return to harbour as soon as possible. As the cook most responsible for their comfort, I discovered that they wished me to provide snacks for a hastily arranged meeting convened by the owners of the music hall group. I let Sam know, and he insisted on my telling the Captain.

Captain Paynter was not kindly to the bearer of bad news.

“What’s the meeting about?” he asked gruffly.

“I was not party to it, but I think it is a protest meeting, and that they plan to insist that the ship is not seaworthy, and must return to San Francisco.”

His steely gray eyes locked on to mine, and the florid colour of his face deepened into a light purple. “Indeed. Very well.” He turned to the First Mate, and said, “Call all hands to quarters, and have all passengers return to their cabins NOW.”

The passengers were clearly worried, but as the crew implied that they were being asked to return to their cabins for safety reasons, they merely muttered among themselves. When we had assembled the Captain addressed us.

“I am here to remind you that as Captain of this ship, I have the sole responsibility to determine matters regarding the safety of the vessel, and to take any decision regarding sailing and navigation of the ship. I also have the right to enforce maritime law at all times that this vessel is at sea. I am here to remind you that my orders must be obeyed by passengers and crew at all times. Any questions?”

There being no questions, we were dismissed. Captain Paynter told me to stay, and to my surprise was not angry at me. Instead, he began to treat me in a manner which reminded me of my father. “You did well coming to me, and I won’t forget it. Now tell those idiot actors they can have their meeting, but say nothing about telling me, or what I said to the crew.” As I turned to carry out his order, he patted my shoulder approvingly.

When the passengers assembled, they were not pleased that the Captain and his officers were there too, drinking the tea which Sam and I served. James Cranston, the tall, dignified head of the music hall group, seemed to be the self-appointed leader. He addressed the Captain in a deep, mellifluous voice.

“This meeting is for passengers only, Captain Paynter.”

“As Captain of this ship, there is no meeting which I may not attend, nor any cabin, or part of the ship that I may not enter freely, Mr. Cranston. But please feel free to conduct your meeting – I’m happy just to observe for the time being.”

So they aired a litany of complaints about the ship. How unsafe it seemed. How it was quite impossible to agree to sailing half way around the world on this ship. Cranston called for a vote of no confidence from the passengers, but at this point Paynter intervened.

“Let me acquaint you with British maritime law. As you know, this is a British ship. I cannot speak for American law, but I think it is similar to ours. I am the Captain of this ship, and decisions about the safety and sailing are made by me alone, in consultation with the other officers. If any member of the crew, or passenger for that matter wishes to *discuss* their fears or concerns with me, I will be happy to do so, conditions permitting. What I will not stand for is the assumption that this ship may be run on democratic lines, voted on by passengers totally ignorant of sailing, seamanship, navigation, or maritime law. The facts of this meeting, names of participants, views expressed, and my comments are now being entered into the log of this ship. I emphasize the following remarks. If there is any further attempt to undermine my authority aboard the *Warwick Castle* I may be forced to have any offender confined to his or her cabin, in chains if necessary, until we reach the nearest port. Having said that, let me say that no captain wishes to unnecessarily offend his passengers. Let me assure you that this ship is seaworthy and safe, and that my crew and I will do everything in our power to make the journey both safe and as comfortable for you as possible. Is that all?’

The stunned passengers looked at each other in confusion. Some shrugged, some began to smile sheepishly at the captain. A small, petite woman with a pale drawn face, henna-coloured hair, then swept to her feet, and shouted in a whining shrill southern voice, “If we are to have no rights, do we have to eat food prepared and served by *Niggers*?” Mrs. Cranston was not pleased with the outcome of the meeting, and, attempting to emulate her

social superiors who owned plantations in the south, clearly believed that all blacks were slaves for the whipping. Fortunately for me, I wasn't a slave.

Paynter simply said, "I have already explained, Mrs. Cranston, that we sail under the Union Jack. Unlike your country, Madam, Britain ended slavery of human beings decades ago. My crew is, again, my sole responsibility. The ship's cooks were employed to cook, and have done so to my satisfaction. The only food cooked on this ship will be cooked by them. However, should you wish to partake of ship's biscuits and water, my cabin boy will bring them to your cabin for every meal. Please let me know what you decide."

I caught Sam's eye, and changed my mind about how lucky I was to be cooking for the passengers. But the Captain made it easier for me by ordering Joe the cabin boy to take the passengers' meals to their quarters, and thus I thought I had avoided any further contact with the vitriolic little Mrs. Cranston.

The Captain thought that he had sufficient provisions to sail directly to Australia, and so we planned to avoid the Hawaiian islands. Too late he discovered that he would need to take on additional food and water so, some six weeks from San Francisco, we headed for the French island of Tahiti. By this time the passengers had divided into two camps, the Europeans versus the Americans. Pierre had thrown in his lot with an Englishman who claimed to be a dentist, but who seemed to be drunk in his cabin whenever a prospective patient appeared. Also in the group were a Scottish family, a couple and their two adolescent boys, who had worked on the California gold fields for six months, but who wanted to live in a colony rather than America. They themselves didn't seem to know why they hadn't gone to Canada. The Europeans also included Charles Chattersby, a red-faced, portly, self-important man who claimed to be the son of an Earl. This scion of the British aristocracy charged around like Don Quixote, demanding 'satisfaction' from smaller men, while insisting that the passengers and crew call him "Honourable". His leisure time was spent thumbing his way idly through a copy of *Debrett's Peerage*, smoking a pipe, while tastefully attired in a silk smoking jacket.

The Americans, on the other hand, were comprised of the sleazy theatrical company, now identified as a touring minstrel show, headed by that charming couple, Mr. and Mrs. Cranston, and their supporting cast. Two other Americans, both of whom had worked as gold miners in California, and who thought they stood a better chance to find gold in Australia, completed this team. The Americans had harboured a grudge since their abortive meeting, while the Europeans wanted only to reach Port Phillip with the minimum of fuss and bother. They took the path of least resistance, and supported the Captain.

Paynter, a pragmatic man, never deigned to notice this split but, as we were about to cross the equator, he told the officers and crew to prepare for a single day's festivities to celebrate the maritime feast of "crossing the line". This meant sprucing the old tub up with the occasional dab of paint, and preparing a sparse array of somewhat perished cheese and biscuits, water, and a single bottle of beer per paying customer, while attempting to arouse the passengers' curiosity concerning an important visitor expected aboard in the next day or so. Late in the afternoon, the entire crew worked together to erect a free standing pool, lined with tarpaulins and old sails, and into which sea water would be pumped the next day, when we expected to cross the equator. I felt fortunate that I had experienced this when aboard the *Falcon*, as at least I wouldn't have to face the forced hilarity of initiation ceremonies again. In reality I hated such things, and found it difficult to disguise my feelings. Of course, to reveal one's impatience only made things worse – it was much better to appear to enjoy the fun in good humour, and hope that the festivities would end quickly. The Captain went to great lengths that day to say that we were to feel free to enjoy the fun, but that we would only initiate members of the crew. Under no circumstances were we to compel passengers to submit to the initiation if they objected, nor were we even to join the passengers as they celebrated during the day.

Shortly after breakfast the next day, the ship came to a stop, and a small boat rowed by two of the crew, disguised in false beards and draped in white sheets, came alongside. Seated in regal splendor at the rear of the boat was the ship's bosun, disguised as King Neptune in a similar guise as his attendants. Paynter acceded to Neptune's demand to come aboard, to claim the allegiance of new subjects aboard the *Warwick Castle*.

Sam and I had been ordered to prepare the pool for the celebrations, and thus we were there to join the festivities as Joe and other crew members who were crossing the equator for the first time were initiated as new subjects of King Neptune. There was a great deal of horseplay, and the passengers watched the crew enjoy themselves. Then the crew left the pool, and vacated it to the paying customers. Paynter had emphasised to his officers that they were to intervene in any victimization, and that no one was to be coerced into participating in the 'fun' should they not wish to do so.

Captain's orders notwithstanding, the soaked crew stood around the pool as 'Neptune', his court, and the passengers frolicked in the pool. It soon became clear that the Europeans were matched against the Americans. First, the Americans ruthlessly pursued Chattersby who, to my surprise, took a great deal of abuse and manhandling in good humour, laughing at the jibes and occasional dunking. The most unpopular figure selected by the Europeans was the whining, whingeing, harridan Mrs. Cranston, who steadfastly refused even to enter the pool. Not even the most patriotic Yankee came to her rescue, and her fellow passengers lifted her bodily and tossed her in. Her face flushed and contorted in anger. She must have caught sight of Sam and me laughing, for she rounded on her tormentors, and said in her carping way, "And I'll hold you all responsible for anything I catch in this water. I am not accustomed to sharing my bath water with the likes of them," at which she gestured at us. This feeble attempt at an insult was so absurd, so juvenile, that it was laughable. Yet it was delivered with such an intensity and malevolence that it stung me and, though I would have admitted it to no one, I found that this low-class actress was capable of hurting me. Why?

Sam looked at me and laughed, and I forced myself to do likewise. After all, it was a childish sort of remark that any ignorant bigot might make. But for the life of me I could not laugh as though it were a joke. I was not willing to be the butt of such humour. Perhaps more to the point, I found myself hating this pitiful little woman, and desiring to retaliate in an equally hurtful and embarrassing way to her. I desperately wanted to pay her back in kind.



As soon as I could I made my way back to the galley, pondering the thought that my response to Mrs. Cranston's insult was identical to the rejoinder of Allan and his friends to Sam and me at the courthouse. Were all human beings racists? Was I the same as Allan or his friends who threatened us in San Francisco? Was I like them under the skin? Was I merely a bundle of identical prejudices dressed in a black skin? If so, what hope was there for me – or for humankind?

## CHAPTER TWELVE

Passengers and crew were both so exhausted by the squabbling between the two factions stirred up by the Cranstons that they were relieved when the *Warwick Castle* arrived at the Society Islands. Most of the crew and passengers were on deck as we sailed into the beautiful lagoon through a narrow break in the coral reef. Though it was only about 9 a.m. a large number of native boats set out from a point close to the dockside, at which two French frigates and several merchant ships were docked. As we slowed to a stop before docking, the Polynesians shouted to us to throw coins over the side and, when we did so, dived for them, in most cases catching them before they landed on the seabed. As each coin was retrieved, the successful diver surfaced, and brandished his prize before competing for the next. Sam exhausted all the nickels and dimes in his pocket, before helping me to throw the rest of mine over the side, while keeping up a friendly banter with the crews of the small dugout canoes.

The small port of Papeete was the administrative centre of the French colony. As soon as we docked, French colonial officials boarded us, and in response to the Captain's request to provision the ship, gave immediate permission to dock, and proceeded to immigration and customs formalities.

During the previous few weeks of the voyage, Pierre and I were able to give the appearance of slowly becoming friends, on the grounds that French was his native tongue, and I spoke it fluently. Thus we were frequently to be seen talking on deck. The gendarme lieutenant asked that all hands and passengers be assembled on deck, and as he conducted all business in French, Paynter asked Pierre if he would translate. Pierre excused himself, explaining that he was not a fluent English speaker; but he suggested that I translate. I felt rather pleased with myself as I, the lowly ship's cook, stepped forward to tackle these new elevated and public tasks.

"Welcome to Tahiti. A stay of up to ten days has been approved for this ship to purchase and load supplies. During the visit, crew members and passengers are welcome to come ashore freely between the hours of seven in the morning and eight in the evening.

However, the general curfew between the hours of eight p.m. and seven a.m. will be observed by both passengers and crew – including the officers – as well as the general population of this colony. This means that everyone must return to their place of residence, in your case this vessel. Armed patrols enforce these regulations, and it is most unwise to be found abroad by them, as punishments for infringing the curfew range from substantial fines to imprisonment for up to one month. I emphasise the place of residence, and in anticipation of a question often asked, it is not acceptable for any of you to stay in a hotel or boarding house, and to be found in such a place is considered an infringement, and will lead to arrest by my men. So too are residences of private citizens here. Thus I emphasise again that you make sure that you return here every evening.”

“Apart from these regulations, we simply ask you all to go about your affairs in a law-abiding way, and to be mindful of native customs as well as the requirements of the colonial administration. Please enjoy your stay.”

Without pausing for reply or questions the lieutenant turned on his heel and walked down the gangway. I turned to Paynter who smiled and thanked me. He now addressed the people assembled before him.

“If you interpret that as a somewhat cool welcome you will be wise. Perhaps I can add my translation. To wit: France will take your money for supplies and provisions for the ship. But this is their territory, and they intend to keep other nations with dreams of empire, such as Britain and the United States, out. Lodgings are provided to French or Polynesian people only. If you infringe these regulations you will find it an uncomfortable and expensive experience. Please take his warnings seriously. Let me say this before turning you all loose on this unsuspecting town. Should any of you be arrested, and wish to protect your anonymity by giving your name as Paynter, I shall take it amiss. My father taught me that the first time someone tricked me was not my fault, but should the same trick be pulled again, I would only have myself to blame. The last time I was here, three Paynters' were arrested on the same night, and it cost me a considerable sum of money to come to terms with the magistrate. This time that ruse will fail, and will cost the perpetrator dearly. Be warned.” Paynter said this with a smile on his face, and a twinkle in

his eye, and most passengers and crew laughed among themselves, entering into the spirit of the captain's remarks, as they turned to make their plans to explore the town.

Pierre, Sam and I headed into town together. Papeete was a small, sleepy village, with mostly small Polynesian dwellings, a few small administrative buildings, including a large jailhouse, and even fewer stores, restaurants, and hotels. As we walked down the main street, we were drawn to the smell of freshly baked bread, and discovered a small patisserie. We sat at a small table just outside the tiny cafe and devoured several small cups of coffee, accompanied by wonderful freshly baked croissants. Here Pierre quickly fell into conversation with another Parisian, while Sam and I discussed other matters.

For the first time since I had known him, Sam seemed almost embarrassed. "Jonathan, you and I are very different people, but the best of friends. You know how much I am involved in the cause of freedom, and will always be. But I am a man, as well as a sailor. When I hit a port I like to raise hell!" Here the loud laugh and endearing smile punctuated his declaration. "You and Pierre, or just you yourself are more than welcome to join me on the pursuit of wine and women, but it won't be quiet, and it may not be pretty, to men of your sensitivities. What concerns me is that you may be upset or disgusted by what I might get up to. I would not want that. At the same time, I am a free man, entitled to spend my time in port in a sailor's usual ways. I intend to do just that. Would you like to join me?"

His honesty charmed me, and I had to join in his laughter. "I am very tempted. Let's wait and see Pierre's verdict."

Pierre seemed relieved that he had already made arrangements with the owner of the bakery to take some photographs of the bake-house, and to approach other businesses to see if they wished to have him take pictures. He turned to the two of us and joked, "I'll leave you two *matelots* to spend your leisure hours in local establishments set up for such pastimes. After all, I should be able to find you if I change my mind." He became serious. "Sorry to do this, but I think I should warn you that the baker mentioned how seriously the authorities here take the enforcement of curfew regulations. So make sure you get back to the ship each night." We agreed to meet him back at the cafe that evening.

Sam and I set off in pursuit of our pleasures. He seemed to know from experience how and where to start. We started at a run-down shack, operating as a bar, owned by an American. Sam winked at me, and started to enter, when the owner steered us back outside into the street. "Don't take this personally, fellows. But some of my customers would object to your drinking here. As far as I'm concerned, I'm happy to serve anyone with enough cash to buy a drink." He shrugged, then went on "You have two choices if you wish to buy drinks, or get laid. You can go to a French establishment, and I'll show you how to get there. Drinks there are expensive, girls even more so – but again, you'll be welcome there as long as you can afford it. The French have lots of faults, but to their credit the colour of a guy's skin is something they don't seem to care much about. Now a cheaper alternative is to drink with the locals, who serve very strong booze, and whose women are warm and friendly to strangers. If you prefer, all you need do is head down that way. Do you speak French?" I nodded, and he continued, "Well, just try getting to know them. Some of them might speak English, but if not, you can always use sign language. I'd really like to offer you guys a drink, but I hope you understand..." We understood only too well.

"French or Polynesian, Sam?"

"I can see you're dying for a drink of wine, so let's start with the French, and see where it leads. And so we went in the direction pointed out by our American friend.

As we made our way into a small, rather dark bar, we felt more welcome than at the American's place, but only just. However, nothing was said, and as soon as I asked for a glass of house red, and a beer for my friend, the place seemed to relax about our presence. Normal conversation between patrons continued, and the barman served me in a friendly enough way. I caught his eye, and he came over to us when no other customers waited to be served.

"I noticed some concern on the part of you and your patrons when we came in. Is it contrary to your customs here that we should come here to drink and...?"

"Not at all. As soon as you spoke in French which we understood, you were welcome to enter and enjoy all the services which we offer. We try to ensure that all our

patrons are French speakers, for we have discovered that many of our American friends are not familiar with our customs. We do that to preserve the atmosphere which one might find in any club for gentlemen. Let me assure you that gentlemen of colour such as yourselves are welcome here, so long as they speak our language, and accept our customs."

Sam could not speak a word of French, and clearly felt ill at ease. I was about to suggest to him that we drink up and look elsewhere for our entertainment. Sam spoke first.

"I'm not comfortable here, not being able to speak the language. Why not split up, and while you stay here, I'll see what our Polynesian brothers and sisters have to offer? I'm used to making my own way when I go ashore, and I think it better that way. And no hard feelings either way?" This sounded good to me, and we went our separate ways, arranging to meet at the café for dinner. I spent the rest of the afternoon drinking wine with a Parisian artist who had spent the last year in Tahiti.

Only Pierre kept our appointment at the small bakery that evening, and after waiting for half an hour for Sam, we ate a hasty meal before heading back to the ship before curfew. Neither Sam nor many of our fellow passengers returned to the vessel that night. I was kept busy cooking breakfast for the crew and passengers next morning. The bosun suggested that we all go down to the local gaol to see how many we had to bail out for infringing the curfew, and found all missing crew members and passengers except Sam there.

It cost those apprehended fines of a dollar each to leave the gaol, and there was much good-natured banter between those from *Warwick Castle* and the gendarmes who had been their jailers. We said nothing about Sam, but Pierre and I decided to start looking for him at the bakery, and found him there, hung over and tired.

He managed a weak smile when we arrived. "Jonathan, you really missed out yesterday. I found the brothers at the point from which they launched their boats yesterday – it's like a big park. Anyway, I had some of their liquor, and they asked me to stay for a feast of the best roast pork I have ever tasted. Sorry I didn't make it back last

night, but they have the friendliest women I have ever met. Beautiful too. It would have been ill-mannered of me not to stay the night. No sight of the gendarmes!"

"From what the baker told me, you'd better watch out for the gendarmes – they seem to be under explicit instructions to cover every area of the town to make sure that no one from any of the visiting ships infringes the curfew, so be prepared to take off into the jungle if they chase you. Apparently, they also have dogs." Pierre seemed really concerned about Sam's safety.

"Don't worry Sam, if you get caught we'll come and bail you out next morning. You'll probably be in good company, I hear that they have around fifty people in that gaol some nights." I added this caution in the hope that Sam would return to the ship every night from now on. I didn't take into account his attraction to Polynesian women. That day was spent in similar fashion to the previous one. Pierre off on his own photographing the island, Sam visiting his Polynesian friends, while I spent the morning buying books, before enjoying a good lunch at the French bar. There I was joined by one of the gendarme officers, who kept a large table amused by his stories of policing a number of French colonies. After lunch I sat with the lieutenant, and told him that I was surprised at the liberal attitude of his country toward other races. He laughed.

"If people speak our language well, and are culturally acceptable, we tend to overlook racial origin. To a certain degree, that is. We tend to look down on those unenlightened souls who fall below our cultural or linguistic standards. For example, we don't care for English-speaking drunks, so if any English-speaking patrons come here, we tend to give them the cold shoulder, and suggest they go to their own place up the street. When you came in here and spoke French, and stayed sober, we were quite willing to welcome you here. That is not to say that we should wish you to marry our sister or daughter! Seriously, colonial officials who have Polynesian 'wives', or even families are not penalised, much less ostracized: but if they attempt to formalise such domestic arrangements, then they would be packed off home to France. Alone. So you see, our racial prejudice is conditional. We tend to be cultural snobs more readily than racial bigots. But only so far."

“Better that than the North American version – believe me.”

“Yes, I noticed your ability to speak French, and it is quite clear that you received a very good education. That must be quite unusual for your country.”

I appreciated his unwillingness to ask personal questions. What I liked about the French was their ability to transcend the personal, but to obtain information through general rather than specific questions. We spent a most enjoyable afternoon, and by the time I returned to the ship, to prepare dinner for those passengers and crew who desired it, I was in a reflective, if not excessively joyful mood.

Sam did not return that night either.

Next morning I could not find him anywhere in town, so went down to the gaol to see if I had to bail him out. I did. I was embarrassed to run into the Lieutenant I had lunch with the previous day.

“I wondered if my friend was here.”

The Lieutenant stifled a laugh, and settled for a wide grin. “He led four of my men a merry steeplechase across the countryside last night. If you can pay the dollar fine, we can release him, but I think you might want to get him some clothes first.”

I paid the fine, and a few minutes later a battered Sam, wrapped in a gray blanket, was led into the waiting room. He sat down with a groan, and began to explain as I bought us both a cup of strong French coffee.

“I partied again last night, and was in bed with the most beautiful woman I have ever met. Around midnight, I guess, the gendarmes raided the village looking for me. I didn’t have time to dress, but was able to grab my clothes, and take off. I’d had quite a lot of their beer, so it took me a while to get going, but when I came to a fence about waist height...”

“You should have been there,” laughed the Lieutenant, who took up the story in broken English. “The sight of his unsteady legs pumping to outrun the gendarmes was impressive, and when he came to the fence, he made a heroic effort to hurdle his black ass over it. By this time he’d dropped the clothes he was carrying, so it must have been quite



painful when part of his anatomy snagged the fence.” Here the narrator paused while he sought to control his laughter. Sam took up the tale.

“It must have looked better than it felt. Before I knew it, four gendarmes grabbed me, and led me here stark naked. They wouldn’t even let me get my clothes. But to their credit they gave me some coffee to help me recover.” He could hardly control his own laughter. Then he got very serious. “I met the most beautiful woman last night, but will have great difficulty facing her today. My trouble is, when I meet a woman I really like, I lose all sense of proportion.”

As I accompanied the now clothed and fed Sam back to the ship, the thought occurred to me that I had a lot to learn about him. For, affable as he was, he was quite prepared to take on any authority, and flaunt his disobedience should he so desire.

## CHAPTER THIRTEEN

Luckily for me, Paynter ran a very tight ship while the provisions he had obtained in Tahiti were loaded aboard by the crew. An officer watched the gangplank during daylight hours, and no member of the crew was allowed to go on shore leave. Sam tried to plead special circumstances, but was kept aboard with the rest of us for the slow task of loading our supplies.

"I really wanted to say goodbye to that woman. She was what I've been looking for all my life," Sam complained to me as we stood at the rail as the ship sailed from the small quay at Papeete. "If we were to strike it rich, this is the first place I'd head for, and see if we were as well matched as it seemed. I only wanted to get ashore to talk to her, before we left, to let her know how I felt about her. I don't even have an address that I can write to. She might marry someone else, thinking I'm not interested."

"Well, the marriages among Tahitians seem fairly flexible, perhaps you can still have her even if she does marry someone else." I tried to tease him into a more cheerful mood, but I should have known that my joke was in poor taste. However, I was surprised when he simply glared at me for a second or two, then stomped off in search of a more understanding audience.

Later, after work, I adopted a more sympathetic attitude. After apologising for my lack of understanding, I asked him why he was so attracted to her.

"She was so beautiful: small, fine-featured. Everything I'm not. But more than anything I liked the freedom of their way of life. That's what really appealed to me. I liked it that there was no white man to run things. They have their own chiefs, and they seem to deal with the French. Anyway, the French don't seem to worry too much a person's race. Have you noticed that on this voyage, only Americans seem to care that we are black, and try to exclude us for that reason?"

I confessed that I had not noticed, and agreed that race seemed to matter less to Europeans.

“Maybe I can teach you some French, and you could stay in Tahiti: or maybe we’ll be stuck in Australia earning our fare back. Wherever it is, we won’t have to live like we do back home.”

Sam laughed for the first time since we left Tahiti, but it was ruefully.

“I might have lost the only woman I’ll ever love, but both of us are sailors, and there is no place where we *have* to stay. As long as we are near a port, we can work our passages to wherever we choose to go. Like this trip.”

Later Paynter called us to the bridge.

“You two only signed on to Port Phillip, but I wanted to ask you if I could offer you both a bonus to complete the round trip? Return to San Francisco with me, and I’ll pay you double your wage for the return journey.”

We both refused, and he nodded before continuing. “I’m sure that most of the crew will try to jump ship when we dock, and I want to head to Sydney for cargo before heading back across the Pacific. Some captains are tied up for weeks in Port Phillip Bay because they can’t get a replacement crew. I intend to make it very difficult for anyone who signed on for the return voyage to desert, so I’d appreciate it if you slipped away quietly with the passengers when they disembark.”

We agreed.

The remaining four weeks of the voyage were monotonous. The minstrel show rehearsed regularly each day, for their big opening in Melbourne. The passengers continued to complain about just about everything, but seemed to look forward to getting back on land, and setting about making their respective fortunes.

Land was sighted at six in the morning of a fine sunny day, and at noon we reached the narrow passage into Port Phillip Bay. The forbidding cliffs of each shore were fringed by small, mean, narrow beaches. There were so few pilots available to guide the many vessels to Queenscliff that we were forced to remain at anchor in the bay for two days. The wait gave us time to compare our new home to San Francisco. Though both cities faced a large bay, there were no majestic mountains here, rather the shoreline seemed to

lack the variety of vegetation that abounded in California. It was rather dull and depressing. Besides, the city of Melbourne had no port on the Bay, and once docked at Queenscliff, any passenger was forced to travel by lighter up the Yarra River, and then by coach to the city. The only alternative was by coach from Queenscliff to Melbourne.

When the pilot finally arrived on the morning of the third day, we left for Queenscliff immediately, and after a pleasant sail up the Bay, arrived around nine. The *Warwick Castle* was berthed, and, soon after, the gangplanks were lowered.

While the luggage was being unloaded, Sam, Pierre and I looked around the dockside. The sea was choppy, and there were many boats in the harbour. Numerous small sailing vessels bobbed up and down, and the breeze made the rigging rattle eerily. The larger ships looked strangely deserted, and we guessed that most of their crews must have signed off or jumped ship. We saw only one old man, perhaps a caretaker or sailor too old to take his chances on the gold fields, aboard one vast British sailing ship. No apprentices or even young cabin boys were around. The place seemed dead.

The luggage was unloaded in about two hours, and we joined a large group of passengers from other ships awaiting transportation up the Yarra River to Melbourne. As Paynter took some time to pay us off, most of the passengers from the *Warwick Castle* were just ahead of us, and there was quite a long walk from the dockside to the coach rank. The Cranstons and their troop were waiting at the dockside while their luggage was loaded onto a large lighter, to take them and their stage sets up to Melbourne by river. My previous encounters with those people encouraged me to suggest to Pierre and Sam that we hire our own buggy to take us to the city by road.

Chattersby had joined a small group of other worthies, not wanting to travel by lighter. They too formed a group of four, waiting to collect their luggage. As I had nothing better to do, I watched this small self-important group in operation. These dandified men had gravitated to each other, like a flock of brightly coloured birds huddled together for mutual protection against the cruel world. Smugness pervaded them: every one was immaculately dressed in a similar uniform, - a suit of light brown or navy blue, and fine, highly-polished patent leather boots. Each carried a tightly furled umbrella. I

watched as they each collected their luggage – and though they had travelled independently, I was surprised that they seemed to have identical portmanteaus. One such case each - no trunks or oddly shaped bundles like other mortals. At one point a porter with a luggage cart came and wheeled it very close to Chattersby's toes, thus splashing mud on his immaculate boots. This prompted an indignant "Oh I say, my man...", but the porter merely shrugged and laughed as he continued on his way. Chattersby then vigorously stamped his feet to clear the mud from his boots, but only succeeded in splashing his trouser leg. With a horrified expression on his face, he turned to another porter, without a cart.

"My man, do you want a job?"

"What sort?"

"Help me carry my bag."

"Does it require two men to carry it?"

"Certainly not!"

"Then carry it yourself."

As Chattersby trudged away daintily, I observed to Sam that I didn't think that too many people in this country would call him 'Honourable'. Watching the master-servant relationship in operation in Australia warmed the hearts of two runaway slaves and a French radical.

Fortunately, we did not have much luggage, other than suitcases of personal items and clothing. Pierre's camera and glass plates comprised the bulkiest item. We rented an old coach driven by a small, resentful man who whipped his reluctant nag into Melbourne. The roads were rough and unmade, the surface muddy. We passed through acres of tents pitched on a field of mud before reaching the city of Melbourne. I was thankful that we would not have to camp there, for we had plans of equipping ourselves the next day, and going up country to the gold fields. We arrived in the city by late afternoon, and immediately began a frustrating search for rooms for the night.

At the inn where the coach stopped there were many offering accommodation, mostly at outrageous prices. As Sam and I were negotiating with an Englishman, Pierre came up to us with another Frenchman in tow.

“This man is offering a room for the three of us, in a boarding house run by an Irish woman who speaks French, and offers to take us and our luggage there for ten shillings.”

Pierre seemed so pleased with himself that we agreed, and followed them along the muddy streets of Melbourne, through small back lanes, to a large two story wooden house. We paid off the Frenchman, who also lived in the house, but who was heading back to the inn to see if he could find more lodgers, and agreed to meet him later so he could show us around town.

We then met our landlady, about thirty-five years old, with graying hair, and stained alpaca dress. She seemed nervous, and spoke in rapid sentences of a strange patois of English and French for Pierre’s sake. Her confusing speech was punctuated by the bobbing of her head as she crossed herself. I went closer to hear her, and it occurred to me that her nervousness might be related to the amount of alcohol one could detect on her breath. She was astute, however, offering us a ‘room’ for two pounds ten shillings a week each: we agreed, and she collected the money from us before we took our bags upstairs. This home away from home was a single dormitory, which, to my dismay, already had three bed rolls on the floor, to which we added ours to stake our claim in the already crowded room.

Experience in California had taught me not to complain, but we took our bags back downstairs in order to place them in her safekeeping, before any more lodgers were packed into this warren for the night. One never knew if one’s roommates were light- fingered!

## PART THREE

### CHAPTER FOURTEEN

I was surprised that I liked everything about Melbourne.

It was a rough, dirty city, and everything was different and new to me. I was used to a decimal currency – Australia used British pounds, shillings, and pence. And to make matters worse, one pound sterling was worth five dollars or more. Usually much more. I came from a coffee drinking country, here they drank tea. Always tea or, if alcohol, usually beer. As in California, the gold attracted people from every country on earth, and one heard every language on the streets, and encountered all kinds of people. Perhaps that is what made it so easy for Sam and me to fit in. Here we were neither ignored nor treated with contempt, but usually delicately referred to as ‘gentlemen of colour’. Not that anyone seemed to care much. This was a town which one either loved or hated: I loved it.

We slept uncomfortably in the crowded loft, six of us packed in like sardines. But I have slept in colder and rougher beds in Panama and California. I detected no fleas on this occasion. Knowing two of my companions well made it easier to sleep, there being safety in numbers.

We were up and about before our room-mates, and by seven were washed and shaved. Our landlady, Mrs. O'Connor, seemed less confused and nervous than last night, and we could understand her speech better when she was not drunk. Still crossing herself at the end of every sentence, she asked if we should be returning for an evening meal, as it was included in the price of the room. She said if we did intend to return, she would cook a special meal, in honour of Pierre, and because she had a brother in Dieppe studying for the priesthood. We agreed to return and eat that evening.

We took the day to look around.

Like San Francisco in its early days, Melbourne was a mixture of buildings at different stages of construction. Likewise, its streets were in some districts completed, macadamised modern thoroughfares, and in other areas were unmade quagmires, into which both pedestrians and any other moving object seemed in danger of sinking without

trace. We made our way through this chaos to the main post office, in the centre of the city. Here we found a building with a handsome stone first floor, surrounded by a broken down wooden verandah. At the front of the building was a wooden clock tower, with a large clock that, every hour, played a melody which none of us recognised. There was a large crowd surrounding the post office, so we pushed our way into a very large hall, in the hope of picking up mail and funds from San Francisco.

At one end of the hall was a counter, and the letters of the alphabet arrayed above windows attended by 26 mail clerks. Endless lines extended from some counters – the ‘s’ and ‘j’ booths in particular – while the three last letters of the alphabet were required to serve no customers that I noticed during the entire four hours that I waited in the ‘j’ line.

Since neither Sam nor Pierre were expecting mail, they waited with me. It was Sam who first mentioned the reactions of the various national groups.

“Do you notice that the British all seem to complain about the convicts here as though there were no criminals in England’s jails?”

We all laughed. Then it occurred to me that a similar generalisation could be made about our fellow-countrymen.

“All the Americans deplore the inefficiency, and claim that if they were given the management of the mails, they would sort it out, and make it cheaper to run. Look, the first clerks they could get rid of would be those on the x, y, and z desks.” As soon as I finished speaking, a young Polish man behind me laughed.

“I’m sorry,” he said in broken English, “But the thought occurred to me that if those three were removed, half the Polish population of Melbourne would be unable to collect what little mail ever gets through here.”

Thus we whiled away the rest of the morning. Jan was a useful contact, as he was down from the Ovens gold field, having been working on a mine with a party of six other Poles. We were able to find out that the Ballarat area was still the richest, and that he was trying to talk the group in which he was a partner into trying their luck in that area. The rest of his party was still working their claim, while he was down to collect their mail, which, they all hoped, contained money from home. What pleased me was the openness



of these miners, for, as hundreds of us wasted the morning, they all stood around in friendly groups, laughing, gossiping and seriously discussing gold prospecting, while they awaited service at the front of the hall.

Our patience was finally rewarded. There was a short letter from Peter Adams, containing no news, but a money draft for three hundred dollars. There was also a letter from Mary-Ellen. A very business-like letter, to my disappointment.

The rest of the day was spent finding the French Consul's office, so that Pierre could register, and let his government know where he was. I was quite surprised at the interest of the Consul, and his willingness to meet Pierre's friends. He mentioned that there were a few French businessmen living in Melbourne, and that at Ballarat there was quite a large French community at the diggings. There was a French priest and missionary, Father Chartier, who had lived and worked as a missionary to the aborigines just outside Melbourne, however, like many others he had moved his mission to the goldfields near Ballarat. The consul introduced us to his wife, who also mentioned the extensive theatre life in Melbourne, suggesting that we might want to see a show before heading for the bush. Before we left, we were told to call again when we were next in the city, and Pierre was requested to let the consul know of any change of address in the future.

After we left the consul's house, I turned to Pierre and remarked, "You are a lucky man, Pierre. Here Sam and I are, unable to visit our consul because we are black, non-citizens of our own country, while you," I said with a laugh, "are an ex-convict, who gets to register at the consul's, and gets to meet his beautiful wife. The consul's wife then recommends the best theatres in town to ex-prisoner Pierre and his disreputable friends, and invites us back. How could you bring yourself to leave a country like that?"

"I've only left it to make my fortune in a British colony, before taking my loot back to Paris!" Pierre, a man not adverse to the joys of gossip, continued with a laugh and a conspiratorial wink. "His wife is certainly beautiful and sophisticated, and came well recommended to the consul by her other men clients at the house she ran in Paris. When

he married her he made no attempt to conceal her past, and by all appearances it has not harmed his diplomatic career.”

By this time we had reached our boarding house and, as we were to eat there, we headed in to freshen up.

## CHAPTER FIFTEEN

Dinner that evening was like a family meal, and it turned out to be very amusing.

We were joined, in addition to our hostess, Mrs. O'Connor, by the Frenchman, Jean Martin, who had led us to the house, and two Englishmen who had been here for nearly a week. When we came down to dinner I realised that I might have judged Mrs. O'Connor unfairly the previous evening. She was well-dressed, and did not appear to be drunk. She seemed younger than yesterday, and a much more attractive person than I had at first thought her to be. Still dressed entirely in black, but with her cheeks rouged, and her hair attractively pinned up, she was, I suspected, very friendly with Jean, and had clearly set out to please him. This worked to our advantage, for Pierre was favoured with conversation in his native language, along with Jean and myself. Our hostess spoke in a very pleasant accent, coloured by her pleasant Irish brogue. She asked us to call her Moya and, as we sipped the pleasant but rather sweet sherry, we were all on a first name basis.

The party divided along linguistic lines, with Sam and the two Englishmen, who spoke only English, making their own conversation, while the rest of us were comfortable to speak in French. Sam and his new friends were in no position to complain – after all, a free meal is a free meal, and the whole reason for it was to celebrate all things French.

I mentioned how warm a welcome we had received from the French Consul and his wife. Moya agreed, "She is a charming woman, and it is a shame how she has been shunned by people who in no respect are her betters! Her past life is the business of no one besides herself, her husband, and her priest. Why jumped up sergeant's women have taken to shunning her in the street!"

Pierre broke in, "Yes, news of the affair was the rage of Paris a few years ago, but times are changing, and few Parisians are blameless in these matters." He shrugged. "I seem to recall that interest was swept away in the political events of the time." He grinned. "For many of us, everything was swept away!"

Jean looked up, "Were you involved in the movement?"

"Yes, I went to gaol for it."

Suddenly Jean warmed to him. They began an animated discussion about the Paris Chartist movement, while I turned to Moya. "The Consul's wife mentioned Melbourne's theatre. Have you been at all?"

"Only once."

"If we make our fortunes up country, then we shall return and have a splendid evening at the theatre," I promised.

When we went into dinner, we all changed to English, for Moya commented that I had offered them all a night on the town if we made our fortune up country. I jokingly replied, "Just a night at the theatre!"

"At current ticket prices, a night at the theatre costs more than a night on the town, which is what most new chums settle for if they discover gold!" Moya replied.

Simon, one of the Englishmen, interjected, "Have you seen the wages they pay here in the city? We had planned to go on to Ballarat, but we are thinking of staying here in Melbourne. We're printers, you see, and have both been offered seven pounds a week to work here at our own trade. Do you have trades?"

Sam answered for us, "We are ship's cooks, I cook plain American food, but Jonathan could work as a high class French chef if he wanted to."

"In that case it might pay you to ask around, for wages are quite unbelievable, at least by English standards." John, the other Englishman, leaned across the table with the earnestness of a preacher. "In England, tradesmen are looked down on, and earn less than clerks. Here, a shoemaker can earn nearly a pound a day. A stone-mason can earn two pounds a day, while a house painter can earn nearly a pound a day, a building labourer can get nearly that."

"They treat tradesmen in France the same way." Jean replied.

"No." I said, "We came here to look for gold, and that's what I intend to do – at least for the first few months. But when I need money, I intend to see what I can make as a cook. Mind you, I don't think I could cook roast beef like this." I had not resorted to flattery, for our hostess had produced the most superb English meal, soup, roast beef and vegetables, and a trifle for desert. Add to this beer or wine, and the evening became very

cordial. "In fact, if I become really rich, by finding a lot of gold, this is where I intend to come to celebrate!"

This brought the proceedings to the port and cigar stage, which our hostess joined with gusto, lighting up a cigar and joining us in brandy. As the evening progressed, I was surprised to see our hostess engage in sparkling conversation with Pierre, who told her amusing stories about his days as a bootblack in San Francisco. Poor Jean looked a little crestfallen after we said goodnight just before midnight.

## CHAPTER SIXTEEN

The following days were taken up with making decisions.

We first had to decide where to go. I was keen to go to Ballarat. It was, after all, the closest of the goldfields to Melbourne, and we were most likely to find gold there. Sam and Pierre were undecided. Pierre seemed really keen to interview and photograph the French priest the consul had told him about, but when pressed agreed with me that Ballarat was the closest goldfield to Melbourne, so wanted to try there first. After much discussion, Sam agreed that we should try our luck there at first, but that we should look around at other areas if we did not find any gold there in the first few weeks.

Our next decision was whether to equip ourselves here in Melbourne, for everyone warned us of the high prices of supplies and equipment. Yet many of the men we talked to at the post office spoke of the dense woods and muddy track through which one had to travel to get to the gold areas. I also remembered stories by forty-niners about starting out to cross America with loaded wagons in the east, and having to jettison food and equipment along the way. So we decided to travel light, and pay what we must to establish ourselves in Ballarat, even though provisions and equipment might cost more there.

Next we had to decide whether to walk or ride. Pierre had ridden before, but Sam and I never had. We were keen to get to the gold, but I had visions of ferocious horses making my life hell, then having no one to sell them to when we reached our destination. On the third day of our stay in Melbourne we went to the sales yards to look at the horses up for sale. None of us was impressed with the stock, and we were amazed at the asking price for the scrawniest horses we had ever laid eyes on. We quickly calculated that three horses, equipment, and feed for our journey would be too expensive, as we wished to dig for gold for as long as our money lasted. So we decided that we would do as the majority of migrants, and walk our way to prosperity. Then Pierre complained about having to carry all his photographic equipment, and since neither Sam nor I was going to help him, we compromised by buying the least emaciated horse we could find, and a small buggy

which could carry all of our luggage, leaving one of us free to drive the buggy, and the others free to walk without carrying loads.

Not wanting to carry a large amount of cash, I decided to see if I could open an account. Such a thing was forbidden in America, even to free people of colour, but the situation was different here, so I went into a local bank and told them my problem. The easiest thing, the accountant told me politely, was to convert most of the cash into a banker's cheque, and set up an account when we arrived. He said that, regardless of my race, I would have no problem in opening an account as, indeed, anyone was allowed to. I was liking this country more and more.

We had one more call of duty to make before actually looking for gold.

Pierre had known the rather dissolute Count Lionel de Chabrillan during their student days in Paris, and it had been Chabrillan that he had notified of his presence in Australia. The Count had recently arrived in Melbourne as the first diplomatic officer of France. During our stay in Melbourne, Pierre had become increasingly friendly with Chabrillan and his beautiful new wife Céleste, and had taken several formal photographs of the couple and their menage as his first commission in Australia. Pierre and I had been promised an invitation to the next soiree of the couple in payment, and we had reluctantly agreed to go out of our way to visit an ancient French priest who ran a mission some fifteen miles outside of Melbourne.

It was to his ramshackle wooden hut that we grudgingly made our way.

## CHAPTER SEVENTEEN

I thought for a moment that someone had played a joke on me, and that my father stood before me to welcome us.

But it was the black soutane and rough sandals that brought me to my senses.

I found myself looking into deep blue eyes, which seemed to sparkle as he moved past Pierre to me.

He welcomed me simply, in broken English.

“I’m Lucien Chartier, and I am so glad you have come, I have dreamed that it would be soon.”

My spirit plummeted at the prospect of having to talk religion, and probably make a confession at all, and especially to a priest speaking English poorly, so I responded hopefully, “Would you like to speak French?”

“Alas, I made a vow when I came here five years ago to speak only English. It is now a vow I regret, but once made...” He smiled apologetically and shrugged.

Pierre took over.

“But I am also French, and Compte de Chabrilan asked me to call on you on his behalf as we passed to the goldfields”

No luck there either. “As I said, a vow is a vow – and anyway it helps to improve my English. I’d advise you to follow the same course, and not rely on your French speaking friends to get you through”, he said rather dismissively.

He immediately turned those searching eyes to me again, and continued his conversation with me, as though he had brushed off an irritating insect, and could turn to more important matters. “I have dreamed about you – who are you, and where do you come from? I work mainly with the Aboriginal peoples, or Koori, as they call themselves, but some of the local families come to hear me preach in broken English.” Then he noticed Sam. “And are you brothers?”



“No,” I replied. “But if it were in my power to choose a brother, he would be Sam – by the way, my name is Jonathan Joseph, I am from America, and I have never dreamed of coming here.” Two people can play the dismissive game, I thought to myself.

I did not know it at the time, for my first instinct was really to dislike this man but, despite my misgivings, one of the most remarkable friendships of my life was about to begin. At first I was very apprehensive that our visit would be sheer torture, and that we would be constantly preached to, about the sanctity of vows, of sin and redemption, good and evil, good deeds and bad, and that he would insist on the agony of the confessional.

But no – it was near lunchtime, and Father Lucien had not long before said mass. He was clearly racking his brain to see what might be on hand to feed three hungry visitors, so I offered, “We have enough food for us all – if you would care to join us for lunch’.

That smile again, “And I have some homemade wine – not Bordeaux, you’ll understand, but what I term a *vin très ordinaire*.”

It was really quite drinkable, and over a simple meal of cheese, bottled olives, and bread we got to know each other. We discovered that this particular priest was strangely non-judgmental, and rather open minded. I thought I would begin to ask a few leading questions of this man who had seen me in his dreams.

“What brought you here from France, Father Lucien?”

“It is a long story, but as we have only just started this bottle” – he eyed the remaining wine speculatively, as though comparing it to an hour glass, and estimating how much time he might have.

“For over twenty years I taught theology at the University of Paris. About fifteen years ago I became really interested in the professors who taught in the late thirteenth and early fourteenth centuries, and in particular a German Dominican named Eckhart who was, apart from Aquinas, the only teacher to be recalled to the theological school for a second term. His is a fascinating period in history, during which most of the great cathedrals of Europe were built. Meister Eckhart and a long forgotten group of Christian mystics such as Hildegard of Bingen wrote amazingly cosmic sermons and treatises, which I became expert in.”

He paused to take in some air, then continued, "But before you all fall asleep, I'll save a detailed lecture on his theology for a sermon - but my study of Eckhart's views on creation eventually led me to believe that I was being called to work with the Koori people. So I came here. From the beginning of European settlement here, but particularly when gold was discovered, the trends of injustice and land occupation by Europeans towards the Koori population became alarming, and I saw why I had been called here, for if God hates anything it is injustice, and we must be compassionate to those who have been treated unjustly."

I have to confess that this kind of conversation was making me uncomfortable, and I glanced around the table to see if there were any signs that my companions felt the same. Pierre was shifting around in his chair, and his eyes met mine, and I thought I detected the slightest shrug as he lit his pipe. Sam, however, walked straight into the trap.

"It's all right for you to talk about these stone age people, but haven't you overlooked a few others - say the slaves in my country, or even the poor of Paris. Aren't they deserving of compassion?"

The old priest smiled before replying, "Of course you are right, to say nothing of countless others, but it so happened that I was called to work here, and nowhere else. The problem is that we too frequently focus entirely on getting rid of evil, and replacing it with what *we* consider to be good, instead of leaving it to God to work out."

This became too much for Pierre, "I went to jail for trying to improve social conditions in France, are you saying that was wasted effort?"

Father Lucien was unruffled by Pierre's sudden anger. He sipped his wine before commenting, "You presumably believed that political action would change those social conditions. I happen to believe differently. I believe with all my heart that God created all men, in fact, all living things, and that he imprinted his image on the innermost soul of humanity. I fervently believe the Christian message, but also that God is involved in this world, and not preoccupied with a faraway place called heaven. I also believe the teaching that in order to live we must die and be reborn. I had that experience of spiritual rebirth,

and God broke through to me, and I broke through to Him after being a priest in Paris for many years.”

“I then followed the teaching of Eckhart, and began to let go of everything in order to experience Christ here and now, in this world which He had created. After I came to the point of letting go of everything, and simply living without a why, I began to understand what God’s work was about, and how I could follow Christ. I have been brought here to tell the people here about God’s love and compassion, and to seek his justice and compassion here and now. I happen to think that the political movement in which you were involved,” he looked down his nose at Pierre, “simply aimed to replace one power system with another, and would have ultimately failed, because it simply created new masters and new servants. I believe we must find a new way of relating to this world, and all other creatures.”

Pierre really got angry. “Are you suggesting I went to jail for nothing?”

“No. But I would question whether you went to jail for the poor or for Pierre. I am not interested in saving people by politics. For me, salvation takes place when I marvel at the beauty of created things and praise the beautiful providence of their Creator, or when I act in a compassionate way towards any created thing – animals or humans, children, women or men, rich or poor, slave or free. I am interested in new ways of relating to all people. That is why I came here.”

There was a long pause. I for one did not wish to pursue the conversation further, for while I will readily admit that I was born and raised a Catholic, that to me means attending Church once or twice a year, and confession never. What business is it of anyone else what I do or do not get up to? That is not to say I dislike the clergy on principle, but I keep them at arm’s length. What disturbed me was that I found myself liking this one, and though he talked religious gibberish, it was not the usual rubbish about sin and punishing oneself. At least this one sounded happy enough here and now. I also liked him because he reminded me of my father, now so far away in New Orleans.

It was too late in the afternoon to head off to Ballarat, so we set up camp in the grounds of the mission, and we sat and ate a late supper with the priest, who had brought

with him another bottle of wine. Pierre and Sam quickly made their excuses, and hurried to the tent, but he was so like my father, and I felt sentimental about the after dinner conversations in his study, that I stayed up talking.

“You must be aware, and tell your friend Sam to be careful when you approach aborigines, who might seem like brothers to you. But beware, for they will know that you are not from their tribe, and may think you to be ghosts. If you become involved in any fights among them, they may think you immortal, and may injure you unintentionally, or even out of fear. If you would like I can introduce you to some of my friends here. But if I do, you must not think that you may take up with their women, for if they think you are a ghost – and they will - they will protect their womenfolk at all costs.”

“You could tell them that Sam and I are not ghosts.”

“And I will, but I am warning you because an olive-skinned Italian recently tried to take one of their women, and because of his dark complexion, they hacked him to death, thinking him a spirit here to haunt them.”

I suddenly felt very lonely. Mary-Allen, where were you when I needed you?

My reverie was brought to an end when the priest suddenly got up and, with a conspiratorial wink, made for a small cupboard which he opened, and extracted a bottle. He brought it over to the table, and with great reverence showed me the Napoleon Brandy label. He raised his eyebrows in an unspoken question, and I nodded in acceptance and thanks. After he had poured us both a tiny sip in two small glasses, he sat across from me ready to resume the conversation.

Just as my father would have.

I couldn't resist seeing if I could stir him. “Don't you miss Paris terribly?”

“Not at all,” he smiled, “though had I come here as a younger man, I undoubtedly would have. I told you earlier of my spiritual breakthrough in the last stages of my career in Paris. When I changed my attitude, I saw that I was not simply a physical creature trying to live a spiritual life, but rather an eternal being having a physical experience in time and space. Eckhart had the same experience, and he described his spiritual journey as a

path which 'is beautiful and pleasant and joyful and familiar'. And so it has been and is for me here and now – so I have no regrets and I do not miss Paris. I love this work that I have been given to do.”

We both went to our beds soon after. I don't know about him, but I lay awake thinking about what he had said for a very long time.

## CHAPTER EIGHTEEN

We woke up early next morning, and though my friends had hoped to escape our host, he was there with a cup of tea. This made me feel obligated to attend mass, which Sam and Pierre simply refused to attend, saying they would prepare our nag and old cart for the road to Ballarat.

There were several local aborigines there, and one white man, and Father Lucien introduced me to them all. The aborigines were shy, but curious, and the white man seemed sullen. The service was short, and the homily brief and to the point.

"All creatures are words of God. God has put a wonderful nobility in the soul of every human being, whether their skin is black or white or yellow, whether they are women or men, whether they are young or old, we are all images of the Great Creator. He has placed us here to care for His World. May He help us all to know and to live this great truth. Amen." Then he finished mass, and his congregation stole away back to the bush. He came to me, and shook my hand, "Jonathan, I am a friend as well as a priest. If you ever need either, you know where I am."

I was suddenly very touched by this kind man, and promised him that I would return, after we had staked our claim.

We slowly left the mission, and once more took the winding, muddy road through the bush toward Ballarat. We began our long trek through the inhospitable Black Forest, home of the most depraved and aggressive human species one would ever wish to encounter. We were to spend five days on this dangerous route, infested with fleas, hotel keepers who charged exorbitant rates for filthy beds, and gangs of bush rangers or outlaws. And a very slow and wilful horse.

My thoughts kept straying to home, and to Father. Had Allan returned with his hoard yet? I wondered about Mary-Ellen, and even thought, somewhat lewdly, I must confess, of the detestable Mrs. Cranston. I told Sam about the warning given to me by Father Lucien about aboriginal women, for I remembered his behaviour in Tahiti.

Sam just laughed, "Sure. I'm going to work fourteen hours a day down a mine, eat the food that you cook, let Pierre take my picture as I work, and not have a woman in the foreseeable future. Dream on, Jonathan! Besides, I think Pierre got extremely friendly with Moya, and why should he get what I can't! Anyway, from what I recall about your voyage to Panama, you're no angel yourself."

I could see that Pierre was surprised that we had noticed his growing friendship with our Melbourne landlady. He did not deny it, but tried to laugh it off. "Gentlemen, or perhaps I should say sophisticated men of the world, never talk about such things. Not in France, anyway."

"Madame de Chabrilan was under no such restriction." Sam laughed.

By this time we had come to a large hill, overlooking the sprawling tent city and diggings of Ballarat. Some areas remained quite forested, while in others tree stumps were all that remained of entire woods. The overall impression of the landscape reminded me of a poorly cut head of hair. Tents of all sizes were pitched along the contours of the hilly countryside, and followed the banks of the creeks and rivers in all directions. It was early afternoon, and small groups of people seemed to have settled around varying sized mounds of yellow dirt, where small fires boiled the 'billies', or water cans for that universal cup of coffee that most people – even the English and native Australians – seemed to drink. Dotted throughout this scene were somewhat larger tents, many flying the union jack flag. Clustered around these were boisterous crowds of revellers, many of them dressed in blue and white striped sailors' jerseys. Clothes lines crisscrossed the entire town, and it seemed that the uniform of the diggers was that same blue and white jersey, for they were fluttering from almost every clothes line.

The smell of cooking mutton permeated the air, even up to the vantage point from which we gaped. The friendly smell of burning wood, especially eucalyptus trees, shrouded the place in a sort of haze, as well as stung the eyes.

Pierre muttered, "Mon Dieu", and hurried to set up his camera. Sam blinked in disbelief, and I enjoyed watching them react to the almost identical scene that Allan and I had once surveyed before in California.

Sam could not believe it. "Is there a mineshaft close to each of those heaps?"

"They didn't dig themselves, and if we want to get ourselves gold, we have to work our asses off – digging, hauling, washing the earth, protecting our stakes, guarding our gold, washing our clothes, cooking, gathering wood, buying food. Man, at the end of each day, you'll have neither time nor strength to look for a woman!" I joked. I began to enjoy my status as the experienced miner. Suddenly, though, we witnessed an incident which even I had never seen before.

We first noticed a group of foot soldiers dressed in blue coats and pants marching along the road from another hill, which we later learned was called Camp Street. Leading them were two officers dressed in scarlet jackets, immaculate boots, and white jodhpurs. Riding fine horses, they seemed to be festooned in every type of cheap theatrical costume ever dreamed up by a flamboyant stage manager – from cockaded hats, to gold braid, they rode before their troops brandishing glittering swords or cutlasses. Clearly the cavalry was leading and directing the infantry.

Their appearance created chaos in the streets and diggings which lay in their path.

Shouts of warning preceded their chase, as the horses jumped over any mounds, clothes lines, or any other obstacle which lay in their paths. Hooves landed in puddles, splashing the drying blue and white washing with a yellow ooze of mud. Men scurried away, but many were rounded up by the mounted men, and chained together by the police on foot, as the warning cries were chanted before the arrival of the marauders like a processional.

Sam drew our attention to an amazing scene taking place to the right of the landscape below us. Three troopers were reaching into a deep mine shaft, so deep that two of their comrades joined them, and kneeled at the muddy side of the pit. Their focus was on a struggling man, who lashed and punched at his attackers above him. He was slowly pulled up over the side of the shaft, covered in yellow mud, and minus a boot, and allowed to lie for a few moments exhausted and helpless. Shortly thereafter the prostrate man was unceremoniously hauled to his feet, and chained to the other dozen or more unfortunates captured by the troops.



The chain gang was forced to follow the main body of troops as they seemed randomly to select other holes in which to ferret for occupants, and force them to join the chain gang. Some of the miners produced a piece of paper, which the officers inspected but, while they reluctantly released some of the men who produced the documents, they threw some of the vouchers to the ground contemptuously before chaining such unfortunates to their growing party of prisoners. We did not need a spy-glass to observe these strange events: we saw the officers ride back along the way they had come, followed by the foot troops who prodded the slow moving chain gang into a large walled yard. Here the prisoners were divided into groups of three or four, and each group was chained to large logs strewn around the yard.

"I'd not like to spend the night out in that yard," Pierre said with a shudder. It was a cold, damp winter day, and the ground on which the men sprawled or sat was yellow mud. Yet many of the men did not seem under guard, but waited in long lines for something to happen. None of us could make sense of this chaotic scene.

"I've seen black slaves treated like that, but never white men, not even servants." Sam was recalling his days as a field hand.

"I'd never want to run foul of that little group of tyrants, so let's go find out who they are and what they were doing," I suggested.

"That's a good idea, but they looked like a posse to me, and I think I read something about having to have a special pass to obtain miner's rights," said Sam. "I remember Moya saying something about there being a lot of bad feeling among the miners about the government fleecing them for the passes. Anyway, let's get down there and find out what the hell's going on here."

"Hell is exactly the word for this place," muttered Pierre as he began to repack his camera.

## CHAPTER EIGHTEEN

We slowly made our way along muddy tracks into town, which gradually gave way to more sure footing provided by logs laid across the track to form a corrugated road. The earlier uproar had given way to groups of men clustered around tents among the diggings, and as we moved closer into town, around more established hotels, with wide verandahs. Whether at tent or hotel their attitude seemed much the same, of brooding, resentful, irritable men muttering and complaining together. We decided to return to one of the larger tents, packed with such groups of men, in the hope that information obtained closer to the diggings would be of a more reliable and useful nature to enable us to understand the men beside whom we would soon be labouring, rather than the gossip of the more established clientele gathered at the more salubrious hotels.

“At least the drinks should be cheaper,” observed Sam.

We retraced our way to a very large tent, with a large central pole extending beyond the roof of the tent to become a large flagpole from which fluttered a large union jack. Pierre volunteered to remain outside guarding our horse and cart, but especially his precious cameras. As we entered the tent it occurred to me that the last time Sam and I had entered a similar establishment in Tahiti we had been snubbed. But no one here seemed to take any notice of our appearance. Behind a line of barrels was a stout bewhiskered barman, who, in an Irish brogue, asked us simply “Gents?”, while raising his eyebrows.

“Two beers?” I tentatively asked, as I was not sure if this place only served hard liquor. “Sure. Two shillings and sixpence each.” I must have looked surprised at the cost, because as he took my cash he casually asked, “New Chums?”

“Yeah, we just arrived from Melbourne, and before that, California,” Sam answered for me. He continued, “Couldn’t help seeing the fight with the soldiers as we came into town, and wondered what it was all about. Oh, I’m Sam and this is Jonathan.”

“Michael.” He gave us our drink without further formality, but in a friendly way said as he turned to a small but wiry man standing along the bar, “Here’s Ray, a

countryman of yours. He can tell you a bit on how things work in Ballarat.” After we made our introductions we brought a beer for Ray, and one for Pierre, and made our way back to our cart, along with our new acquaintance.

Ray came from Boston, and had made his way to San Francisco in 1851. He said he had not made any money mining, but he loved horses, and had saved about ten thousand dollars driving coaches in California before once more getting gold fever and heading for Victoria. He had been here for three months, but the party he had been mining with was about to split up, because it had made nothing yet from mining. Everyone but Ray wanted to try the Bendigo diggings, where there were a lot of Americans.

Sam always believed in the direct approach, and asked, “Do you mind talking to black men?” Then he laughed and added, “to say nothing of a Frenchman!”

“No one cares much here, certainly not me. Where I come from, in Boston, there are a lot of people involved in the anti-slave movement. I’ve never really given it much thought though – always been too busy making a living. Let me tell you how things go here.” He touched the colt revolver in his belt. “Get yourselves armed, and never go anywhere without it. Some you can trust, but there are a lot of convicts who have come over from the old prison colony of Van Diemen’s Land, and they are called Vandemonians. Don’t trust any of them until you know they are honest, because the majority will rob you blind. Most of the other miners you can trust, but you have to be very, very careful.”

“This is a country built on injustice, vengeance, and hatred. They have little, if any, notion of personal liberty, and the concept of freedom is unknown. Think of it as living in a time and place where the American Revolution had never taken place, and where privilege and injustice is normal, and you’ll be on the right track. The Irish hate the Scotch and the English, and *vice versa*. Come to think of it, most everyone hates the English because they run the place. Farmers and landowners hate the miners, because until gold was discovered, the men who became miners had to be farm labourers, and worked for the farmers, or squatters as they are called here, for starvation wages. Free settlers hate the

convicts and ex convicts. Protestants hate Catholics. Most settlers hate, mistreat and murder aborigines, and especially hate the Chinese. Whether you are dealing with a member of a group you are supposed to hate, or someone who is supposed to be a friend, mistrust them until you are certain you can trust them. That's the bad side – but when you know you have a friend, you can trust him with your life. That's how men survive in these holes in the ground. You find a *mate* or two, and form a group to work on a mine – just like in California. A mate is a friend for life, and you spend all of your time together, and must be mutually prepared to fight and even die backing each other up.” Here he paused, and after a sardonic smile continued, “there's not many women around, so some mates sleep together too. But there again, that's the very reason why they hate the Chinese, or so they say.”

“The biggest thieves and cheats are the police – called traps, or foot police, to say nothing of the troopers, or mounted officers, who carry out licence hunts like the one you saw earlier today. Magistrates are also corrupt, and always side with the police. So if you happen to get arrested, never expect to get a fair hearing. I've found you do better if you keep your mouth shut, give them no trouble, and pay up. Soldiers are usually drunks, especially those with stripes on their sleeves. Most of them will kill for a drink.”

“Is there any organised opposition, or is it everyone for themselves? All they seemed to do to protect themselves against the police was shout a warning,” I observed.

Ray warmed to his task of informing us. “When there is a raid, we, the diggers, warn each other by shouting ‘Joe. Joe. Joe.’ I don't know who this Joe was, but if you hear it being yelled, and you don't have a licence, run like hell, or try to hide down the shaft – but really you'll be better off to run.”

Sam asked the question I had been wanting to, “What about joining up with us, if your mates are leaving?”

“The reason I won't go with them to Bendigo was they thought that we had bottomed out on the shaft we've been working for the last few months, but I didn't think we have. We're still parting good friends, and I could go with them...” He worked hard to prove he was a reliable friend, but I couldn't help wondering. “The only reason they

haven't left yet, is to watch the claim while I had one last drink, and tried to find some new mates."

"It would sure make things easier if we had four to work the claim, and if you've got a tent, I have most of the tools and equipment to keep us going. I don't mind working down the shaft, if one of you worked with me, one could haul the diggings, and the other could work the cradle." Ray was clearly enthusiastic to have us team up.

"I did most of the work down the shaft in California," I said, "and Sam and Pierre could haul and wash, and we could share all the jobs when they've gotten a little experience."

"I could cook," hopefully suggested Sam, who loved simple American food, and had no fancy for French sauces and wine.

We all shook hands on it, and moved off to our claim, on the Eureka lead. We were able to buy out Ray's mates for ten pounds each. They set off the next morning for Bendigo, and we settled in.

## CHAPTER NINETEEN

The new claim was ours by next morning, and, leaving Ray to guard the site, we set off into town, to the Gold Commissioner's camp, to pay our licence fees for the month. We arrived about nine thirty in the morning, and were surprised to see a line of about fifty men ahead of us. We joined the queue, and even so were directed to "get into line and wait there until called" by an officious half-drunk man with several front teeth missing, through which his reeking spirituous breath sickened those in its path.

It was like Melbourne Post Office revisited, and despite the glowering presence of the government flunkeys we gossiped and laughed with some of our fellow diggers. These men were from most European countries, and a few from the United States and Canada. They treated us as equals, and didn't seem to care about what anyone looked like. Better still they asked no leading questions about one's past life, and this unwritten rule was never transgressed by any digger I ever met. They all complained about Rede, the Gold Commissioner, and his heavy-handed administration of the area. He sounded like a dictator, and I decided to steer as clear a course as possible from all officialdom from Rede down. We openly laughed at the soldiers regulating the line of men wishing to obtain gold licences.

"Used to be a lot more relaxed waiting for them to get around to processing each miner, and on a dull day, when there was no sunshine, we'd sneak around the back of their tent to relieve ourselves. One day though, some fool pissed right on the canvas, drenched the sergeant, and found himself in jail for a month. Took them a long time to work out why it smelt like a urinal, but." This laconic Australian drew an enormous laugh from us all, and with the joking and chatter, it was soon my turn to pay my thirty shillings to the hung-over, resentful clerk. I played the part of the dumb black man, and soon completed the transaction.

We returned to the claim, to find Ray washing his clothes, and then we all went to inspect the shaft, and the area where we washed the dirt in the cradle. I knew from California the way things were done, but it took a while to show Pierre and Sam what their

jobs would be. “Don’t forget what you saw yesterday,” Ray reminded us, “we all have licences, so let’s keep them on us at all times, because you never know when that bastard Rede or his traps will drop by looking for them.” The only time the even-tempered Ray seemed to swear was when he talked about the goldfield officials.

Pierre wanted to find gold as soon as possible, so he said hopefully, “How about starting now, there’s a few hours daylight left.”

Sam rubbed his hands together enthusiastically and agreed, so while either Ray or I took turns digging, the remaining two hauled dirt to the cradle on the riverbank. When we had enough to wash, we showed Pierre and Sam the process, and when they became sufficiently skilled to finish the job, let them finish the day’s work. We had a few traces of gold, just a few ounces worth, but still enough to buy us food and grog for the first night’s celebration. Ray took Sam to the sly grog tent, and sometime later they returned with some whisky in a nondescript brown flask, and a few pounds of mutton and other staples to keep us going for a few days. Over a meal of damper and fried mutton, Ray continued our education.

“We always leave at least one to guard the claim site, day or night, and whoever it is has to be armed. If we don’t, someone will jump the claim, and we’ll have a hell of a fight to get it back. It all looks lawless, but it isn’t really. These men have very strong ideas about right and wrong, about freedom and responsibility. For example, no one ever works on Sunday. Most men don’t believe in all that Sabbath stuff, but they respect those who do. All preachers are treated with respect, no matter what ratbag ideas they may have. Same with women - if you’re ever lucky enough to run into any. And kids - which reminds me, the Catholic priest, Father Smyth, is a very good, gentle man. Now, I’m not a Catholic, or anything else, but he and his helper are never mistreated. This is important for you to know, because Johann, Smyth’s servant, is a bit simple, but we have all adopted him as a sort of mascot. Someone didn’t know this and booted Johann, so the rest of us ostracized the man until he left. It is enough for us that Smyth or Johann will come to the aid of any miner, no matter what their religion. Not many of us are God-botherers, but why shouldn’t anyone do what he wants?”

“You can also get ostracized for things like working on Sunday, so go carefully.”

Pierre shuddered, “I’ll be happy to leave when we make our fortune.” Then he remembered, “And when I’ve taken a few pictures.” No one disagreed with him.

None of us was very religious, but I decided to go to mass the next day, Sunday. There were a few miners, and some families with children. Father Smyth seemed a kind and patient man, waiting while his simpleton servant slowly acted as his altar boy. After the service I shook hands with the priest, and mentioned that we had dropped in on Father Lucien on our way into town.

After making polite inquiries about his health, the priest noted, “He is a very fine man, and has a brilliant mind. What did you think of him?”

“Well, I’m not very religious, but I really enjoyed talking to him. He seems to actually find fun and humour in his faith. He also reminds me of my father, so I couldn’t help liking him.”

The priest blinked, perhaps surprised that a man as dark as me should have a father who resembled a white French missionary. I couldn’t help laughing, as I explained the situation in the ménage Joseph in New Orleans to Smyth. “So you see, Father, I am what might be politely called ‘illegitimate’.”

His reply was immediate and spontaneous. “My friend, during twenty odd years as a priest I have never met an illegitimate child, but hundreds of illegitimate parents.” He touched my arm gently to emphasise his point. “I think we need to talk further, will you stay to lunch with me today?”

Cursing my own impetuosity, and that bad habit of letting my tongue run away from me, I accepted his invitation with the anticipation of a fire and brimstone lunch.

Following mass, we walked to his nearby presbytery, accompanied by his servant Johann. Smyth was a slight, florid, man in his late thirties. He spoke with a slight Irish accent, so I made conversation by asking where he had trained for the priesthood, and discovered that he had trained in France, and spoke the language fluently. I told him about Pierre, and he promised to put us in touch with the thriving French community –



“Did you know that you can learn French at the Mechanics Institute here?” he asked with a bemused expression on his face.

I discovered to my delight that he kept a simple but satisfying table, and we shared some wine over the meal. He was not a man who pushed religion, but told me about his congregation, who spoke many different languages, and came from all over the world. His sympathies clearly lay with the miners in their struggles to obtain a fair and honest administration, without the injustice and brutality of the licence hunts. Finally, after lunch, he started the conversation which I did not want to have, but into which I was forced by obligation and respect for the man.

“You have said that you are not a religious man, and, thank God, you are not, for many people think that priests would prefer to bleat about God than enjoy good fellowship with other human beings. I asked you to lunch to welcome you here, and to say that so far as I, and I think most of my congregation are concerned, the colour of your skin is quite immaterial, as is the marital state of your parents. Remember, you are living in a land settled by convicts. Only those whom you would not wish to know seem to care about such things. So please feel free to come here whenever you wish, and whenever you need me. I won’t press you into the confessional. But when I spoke to you outside church I wanted to say that you might find it helpful to visit Father Lucien when you have a day or two, and spend it with him. He has some very interesting, rather unorthodox, ways of looking at spiritual things. It simply occurred to me that I should recommend that to you, while offering my own friendship.”

I was so touched that it took me a few minutes to master my feelings. “I can’t tell you how much your hospitality and friendship mean to me, and I had not really thought about spending a few days with Father Lucien, but I’ll do that soon. Meanwhile, I can reassure you I’ll be back in Church next Sunday.” Before leaving, I turned to Johann, and thanked him also for his hospitality. Like many of his kind, his reply was inarticulate, but he shook my hand warmly.

“Johann doesn’t speak very good English, but now he knows you, I’m sure you’ll see him around town on one of my errands, and he’ll remember you.” Smyth replied diplomatically. “He’s a great mate of most of the diggers, Catholic or Protestant.”

I returned to the tent around mid-afternoon, to discover that Pierre had left on a photographic mission.

Ray and Sam were having a discussion about freedom and equality, and seemed to hold similar opinions about political matters. “Ray knows a few Americans as well as other Europeans who are banding together against these licence hunts and taxes. They have a meeting this afternoon, and I thought I’d go along with him. Or would you like to go, while I stay with the claim?”

“I had quite a bit of wine for lunch, so that suits me fine, though I’d like to go to one of their meetings on another day.” I thus made my excuse easily, but after getting caught up in the court case which led to my final break with Allan in San Francisco, I didn’t have much taste or enthusiasm for political or legal fights.

It was a few hours later that I was wakened by Sam’s laugh. “Look at him, sleeping like a baby, when we have been out putting the world to rights... Come on Jonathan, we have to tell you about how we helped to organise the opposition to the licence hunts, and to get us some rights from the bureaucrats in Melbourne...” He was very excited that there had been a lot of miners from different European countries, and quite a few from home. He was particularly impressed that the Americans had accepted him as one of their own, and he was clearly delighted that they wanted to include us in their efforts for greater rights and more freedom for the diggers.

There might be masters and slaves in this town, but instead of being based on the colour of one’s skin, it was based on whether you wore a British uniform or not. Sam clearly was overwhelmed by his new social status. But I wondered.

## CHAPTER TWENTY

Next morning we started work in earnest, and the old excitement of searching for a fortune came back to me, so that by the end of the day it was good not to have to cook before taking a rest, as had been the case in California. Sam had the damper and mutton sizzling over the fire, while the smell of coffee made us more hungry. We had washed in the river, and lounged around the fire, poring over the few small specks of gold which would at least cover the day's expenses.

It was early June, and winter in Ballarat. The night chill wasn't far away, so all around us small groups of men began to build blazing fires to last as late as possible into the night. This then was to become our daily rhythm, just as it had been in California. There seemed to be a bit more lawlessness here, and every night our sleep was disturbed by the occasional firing of a Colt, the barking of dogs, and the strange sounds of animals up to no good in the bush.

When we were not working, our group seemed to divide into three. Sam and Ray became close friends, and always seemed to be attending political rallies and associated committee meetings. Pierre spent every spare minute taking pictures around town, while I mostly stayed around the claim, reading up on some new interests.

Father Lucien and Smyth had started me thinking. Smyth was becoming a friend and, although he never forced his religion on me, he assumed a certain interest on my part, even though I made it quite clear that at best I was a nominal believer. I could hardly believe it myself, but I started to read some of his books on ethics and church history. I hasten to say that this was only an intellectual interest, and I saw myself in no danger of becoming obsessed. I did, however, go to mass on most Sundays.

These personal concerns were minor compared to our group preoccupation with getting rich, and we worked hard for over a month without discovering more than sufficient gold to keep us clothed, fed and licenced. I could feel that Sam and Ray were becoming impatient, and they started to talk about selling up, and moving to the Ovens River district, where some really spectacular finds had been made. Pierre wanted to stay

with me, as he liked to take his Sundays visiting other miners to photograph them for a book which he was writing for the prospective French emigrant in search of gold in Ballarat.

Sam was getting quite annoyed by my reluctance to join his miners' rights group. I have never been one to respond well to nagging, so the more he hectored me, the more I resisted attending. But Sam was like a big brother to me, so I eventually gave in. After arranging that Pierre guard the mine while we were away, I set off with Sam and Ray to my first meeting.

## CHAPTER TWENTY ONE

I had a premonition that I would not enjoy the evening. The court hearing in San Francisco had taught me that justice came at an exorbitant personal price, not usually in cash, but often in the life of some innocent bystander. As I trudged along with my two friends I was able to enjoy my morose memories undetected, for as they walked they energetically discussed politics. We finally made our way into the *Albion Hotel*, through the crowded noisy bar, and into a smoky dark room. There were about a dozen men already assembled, all dressed in blue and white striped shirts. Ray and Sam were greeted loudly, with much back slapping and joking.

It was not hard to see why Sam was so popular, for his immense black frame towered head and shoulders above everyone in the room. Clearly, if you were going to fight for political rights, this was a man to have on your side. My friends introduced me to the rest of the men in the room, and they made gave me a warm welcome. But they quickly turned back to the smiling affable Sam, who was beginning to show an aspect of his nature which I had not seen since the early days of our friendship on the ship bound for Panama.

It may have been jealousy on my part, but I prefer to think of it as natural caution around white American men, for there were some Texans among Sam's admirers, and I was rather suspicious of their motives in befriending my friend. There were diggers from other countries also, from England, France, Italy, as well as places like Canada. As in the diggings themselves, there was a multitude of foreign languages, and broken English spoken here. I was particularly interested by some Poles, who stood around in a rather aloof group, they too seeming cautious about the proceedings.

I approached them, and tried speaking English to some of them without much success, then, as soon as I tried French, they appeared to become less guarded in talking to me. I let them know that this was my first meeting, but that I had misgivings about some of the talk of political protests going around the diggings. I half expected to be ignored, but a tall, blond young man of about thirty immediately replied that he shared my feelings.

He explained that they had all fought for Poland against the Germans some years before, but after they were defeated they had all been exiled to France. Some of them had fought in the French Foreign Legion, while others had become involved in the various Chartist movements in Europe.

"I ended up in England," he explained, "and was very lucky to have been given another chance there. While it wasn't perfect, I was treated more fairly than in Poland, or Russia, or France for that matter. I don't agree with the licence system, and hope to change it, but I would be most reluctant to take up arms against the country which gave me and many of my mates political asylum." His comments were clearly sincere, and the man's dignified and military bearing impressed me.

Before we had a chance to continue our discussion, an intense little red-haired Italian called the meeting to order, and Sam and Ray beckoned me over, gesturing to the vacant seat which they had saved for me. By now there must have been about thirty of us crammed into the room, and it was no easy feat for the little Italian to bring order out of the chaos, but he did his best. His great weakness was his heavily-accented English, which he frequently punctuated with phrases like, "Great Stuff!" On the other hand he had a superb command of several other languages, and easily provided simultaneous translation from German, or Italian, or French into English with remarkable speed.

The first speakers all expressed outrage at the continued levy of the mining licenses, and the endemic corruption among the gold-field officials. None of them seemed to be able to put forward a plan to end these unjust actions against the diggers.

Then a tall, rangy, mean-faced Texan stood to speak. He left the majority of us in no doubt about our need to organise a revolution along American lines, to rid ourselves of the yoke of unjust British rule, and to create a new Republic like the United States – a country of freedom and democracy. Cheers all round.

Before I had a chance to stand my Polish friend did and, speaking in broken English, said he agreed that the licenses were unjust, and that we should organise protests to the Governor and his Counsel in Melbourne. At the same time, we must send letters to some of the reform societies in London. If we all simply refused to pay the license fees,

the local authorities would not have the manpower or the jails to imprison us all. Then his tone changed. “ I and my friends were taken into Britain and allowed to live and work there, when we had to leave Poland. When gold was found here in Victoria, we were allowed to come here, and were treated by the British government in a friendly way. We could not now turn and rebel against those who had been our friends, and if there was an armed rebellion, we could not join it.”

Straight away another short, stocky, and aggressive looking Texan sidekick of the first American jumped to his feet. “Who needs these dirty Pollacks? They couldn’t even fight for their own women and children against the Russians. Why, we were able to overthrow the greasy Mexicans with a few hundred Texans, before we could clean up the place. We all know how we would treat any Pollacks after we take over.”

I stood and asked, “Would you also string up black men such as I? Some people here may not know that they continue to hold us in slavery in Texas, to be able to buy and sell us like cattle, to separate men from their families and children, and to work them to death in the fields if they so desire. I presume you would do the same to us in this new republican paradise for the select few which he was planning here.” As I saw him rising to his feet I continued breathlessly, “Whereas I and my friend,” here I pointed at Sam, “came freely to this country where we are as free to come and go as any other citizen. How is that for freedom and democracy in practice! No, I agree with my friends from Poland, let’s try to change things by peaceful legal methods before we start shooting others!”

When I sat there was silence, then a few jeers, before the first Texan stood and spoke smoothly, “Of course details like that have not all been worked out yet, but with men like Sam there, I’m sure we could come to some agreement.”

I was astounded to see Sam smile at this, and I rose from my seat to leave. As I got to the door a group of Poles formed a group around me. Outside, the leader who had spoken came over to me and said, “The fat one was getting up to follow you, but was detained by a few of our friends. Why don’t we walk back to your camp with you – for who knows what harm might come to a lonely miner on his way home. Let’s have a drink

on such a cold night. But watch yourself, and stay armed – some of those Americans can make bad enemies.”

Didn't I know it!

While we drank beer, we discussed our past lives, though I did not tell them I had been a slave of my own father. Some of them had served in the French Foreign Legion for a few years, and were quite hardened campaigners.

Nils was the leader's name, and he had been an officer in the Polish cavalry, then joined the Foreign Legion, before travelling to England. His bearing was military and somewhat aristocratic. “Watch out for these scoundrels who offer freedom, then set themselves up as petty dictators! We are thinking of moving on in a week or so and, as this might be a rather unhealthy place for you, we would be happy for you to join us.”

I was moved by his offer, and agreed to go to their camp in a day or two to discuss arrangements.

After I had been back for about an hour from the meeting and had brought Pierre up to date with the proceedings, I turned in. I quickly fell asleep.

Suddenly I was awakened as the tent shook, and I turned to see a rather abashed Ray turning to speak to Sam, who crashed into the small camp like a tornado. A startled Pierre blinked up from under his blankets, while a furious Sam looked from Pierre across to me. Almost at a loss for words, he finally shouted at me, “I never would have believed that you would sell out, Jonathan, not after what we have been through together! I take you to a meeting, and the first thing you do is pick a fight with my friends. Is it all that religion that's gotten into you.”

There seemed little point in arguing with him, so I kept quiet, and let his anger run its vicious course. In my life I had suffered a lot of personal abuse from Allan, but I was unprepared for Sam's assault because he had been such a dear friend. The personal attacks which he made on me, my way of life, my religion, brought me as close to tears as I had come since leaving home.



It seemed an hour or more before my former friend turned, picked up a glass of water on the table, and turned away. There seemed little for me to do but to turn over, pull the blankets over my head, and try to sleep.

The next morning we all ate a silent breakfast, then I considered it my turn to reply. As I started to speak, both Ray and Sam started to rise from their chairs, and I surprised myself by shouting at them, "Sit down!" Ray appeared disconcerted but complied, while a petulant Sam stood defiantly at the table, hands on hips.

"You did the shouting last night, so perhaps you would be man enough to hear my reply this morning. If you walk away from this table now, our friendship is terminated."

Sam sat without a word.

"Thank you. I will not refer to the things you accused me of last night, but I will explain what happened. Then I will get my things and leave, for I have nothing more to say to either of you." I turned to Pierre, "That doesn't apply to you, mate."

"Last night I reluctantly went to a meeting, and found that I agreed with some of the non-violent protests that were made, especially by some Poles. I was surprised that I agreed with any of it. But when red-necked American slaveholding loudmouths began to lecture me about freedom and democracy it turned my stomach. I am surprised that you two, both men of honour who also despise slavery, should have joined arms with such men. So I spoke my mind. To sum up: my feelings, which have not been changed by your personal insults, are that I will never join the so-called freedom or democracy movement led by such men, because they are hypocrites. You have chosen to join them, and that is up to you. Unlike you, however, I would have been prepared to disagree with you, but to remain your friend in every other respect. That is now too late."

Both Ray and Sam seemed surprised, and about to speak, but I cut them off. "Despite what has happened I still have a one fourth share in the hole outside the door. To show that I have the rights of a free man I will continue to work my share of the mine, and sleep in this tent. I don't mind what the rest of you do. I will be eating elsewhere, so will not contribute my share of the food costs. I will continue to work with you, but

outside of work I want nothing more to do with either of you.” I turned to Pierre, “This fight does not involve you, and so far as I am concerned, nothing has changed between us.”

Pierre replied in French that he understood my position, and that he had no alternative but to try to get along with everyone as before. I replied in English, after translating what he had said to Ray and Sam, that I had no problem with such a temporary arrangement. “In any case I will be out of here in a few days, when I find some new mates to team up with, and sell my share in the mine.”

## CHAPTER TWENTY TWO

As I pushed aside the flap of the tent, both Ray and Sam quickly followed me, and Sam began to apologise. I stopped him. "I've made up my mind. We'll work together until I can find a replacement suitable to you three, who will buy me out. Until then we work together as usual, but that's it."

A hard look came over Sam's face. "If that's the way you want it, that's fine with me then. As of now I give up being cook, and will work my turn down there." With that he slowly lowered his massive bulk down through the sails we had rigged to catch any passing breeze and, once at the bottom, he began to tear the earth apart with a shovel. He stayed angry all that day, and must have shifted more dirt than all the rest of us combined.

That night I went over with Pierre to John A'loo's restaurant, where we cheerfully tucked into great steaming bowls of vegetable soup. Still hungry, we then stuffed ourselves with lots of rice and spicy oriental dishes which, I remarked sarcastically, "Makes a real change from Sam's American food." I could not help hoping that Ray and Sam were sitting eating a lonely and disconsolate meal in the tent. Pierre and I went on to hear a band and some minstrels singing in one of the hotels on Main Street, but our hearts weren't in it, so we returned home. By that time the others were in bed, so we quietly went to bed ourselves.

The silence continued next day. Sam jumped down into the diggings, as he had done the previous day, and commenced furiously to shovel earth, which the three of us were kept busy working through. Pierre, who was wary of saying anything about the situation to prevent causing further ill feeling, at one stage chuckled to me in French that Sam was a veritable steam engine, flailing away like an automaton, while smoking from the ears.

I grumbled back that his productivity only made it worse for the unfortunates who had to wash the dirt, but I could not help smiling with rather smug satisfaction. I must also confess that I was afraid that Sam might inadvertently miss the seam of gold for which

we were searching, for digging was not really a matter of brute force, but of a selective and sensitive awareness of the earth which one dug up.

Nevertheless, Sam churned on through several days of near silence for, even if we had wanted to talk, we were forced to wash out the dirt in a mad rush not to fall behind. But not of a speck of gold did we see.

Around mid-morning of the third or fourth day, Ray, Pierre and I all stood gasping at the top of the pit, while the rhythmic sound of Sam's shovel cutting through soil relentlessly clattered on. We could only exchange breathless glances, before we each turned back to our individual work, but we lingered, hands on hips, for one last gasp of air. It must have been stifling down in the pit, even with the sails which we had rigged to circulate whatever puff of breeze might be captured to ventilate the stale fetid atmosphere in which Sam worked.

It was then that the sound of the shovel changed from that of slicing through soft earth, to a single dull clunk of tool striking something more solid. The shoveling stopped. There was dead silence for a minute or two, then the pit erupted.

"Man", Sam shouted, "Will you guys should take a look at this!" Three sets of heads and shoulders peered down at him from the edge of the pit, through flapping sails. He was crouched in a corner, scrabbling in the ground, wrestling either with a stone or something infinitely more valuable. Pierre was the first to spring down next to Sam, and Ray and I could scarcely hold our excitement while the two men below wrestled a huge, dull gold nugget out of the ground and dropped it at their feet.

Our differences and fights were immediately cast aside as the four of us danced wildly around the small hole in the ground. Soon men from all around came to see what the commotion was, and all joined in our spontaneous celebrations.

By that night we were all rich men.

We decided to rent a private dining room at Bath's hotel. But before we went off to celebrate Sam and I had a quick word, in order to patch up our differences. We both

did so with a great deal of regret, for I think we both knew that our friendship had reached a turning point, and that things would never be the same again.

After a quite good meal, washed down with wines, beer and spirits of our choice, our conversation turned to our future plans. I felt that I had to start off, as I was the one who had been going to leave the group.

“When I woke up this morning I thought I’d be eating at John A’loo’s again this evening,” I joked. “While the food is good and filling there, it sure could not match this. Here we are though all together in a spirit of harmony that we lost in the last few days. If it hadn’t have been for stirring up big brother here,” I raised my eyebrows to indicate Sam, “I would have walked away in anger from the finest man I have ever known, apart from my father. Sam, your friendship is worth more to me than all of the gold we found in that damn hole in the ground. But we must not endanger it again. Recently, your interests have developed in directions I can never agree with. But to make the matter clear, I think that the government is unjust, and that we must continue to strive for reform, but in a non-violent way. So I am on the same side as you and Ray. I just don’t agree with the way your friends from Texas want to bring about political reform. But that is a minor detail.” I took another long drink of my wine before continuing.

“We are now all rich enough to make our own decisions, and mine is to head for Melbourne, and see what that leads to. So I’ll sell up my share and do that. What about you guys?”

Pierre grinned lasciviously. “I’ll head off with you to reacquaint myself with the lovely Moya, and I think I’ll invest in a photographic studio for new chums like us, so we can ride the coach together.”

Sam and Ray wanted a few days on the town, before reworking the mine, so it was agreed that Pierre and I would sell them our shares, enabling them to choose their new partners freely. Pierre and Ray headed back to camp, while Sam and I shared one last glass of Napoleon brandy.

He was as moved as I had ever seen him. “Thanks for calling me ‘brother’ – in spite of everything I said the other night, I feel the same way too. If this is friendship, this

is as good as it will ever get, I do know that. That's why I got so mad the other night, because I've seen us go different ways, and I don't like it."

"I don't like it either, but that's the way it is. I am still like a brother to you, and brothers go their separate ways, and that's as it should be. Incidentally, I agree with you that the government is corrupt, and needs changing. But as I've already explained, it is your friends from Texas, and the methods which they want to use to get reform. Sam, beware a group of men who want a new government with them in charge, that's not democracy, no matter what they claim. So we just disagree about means, not ends. But I am not fool enough to try to change you right now. But, you know, I have a feeling we've got other work to do together, after we've cooled off for awhile. But I do know that if I ever need you, or if you ever need me, we only have to ask. Am I right?"

Sam was too moved to speak, but his reply was unmistakable in the speed with which he grabbed my hand in his massive paw, and squeezed it till it hurt.

## CHAPTER TWENTY THREE

It took a few days for us to wind up our affairs in Ballarat. Pierre was busy packing his collection of glass photographic slides, and writing to Moya.

For my part I was mostly preoccupied with settling my financial affairs, and saying goodbye to Father Smyth and his servant Johann. The news of our good fortune had spread throughout the small world of the diggings so, when I attended mass the following Sunday, the friendly priest gave special thanks – with a knowing glance at me. After the service I was again invited for lunch, and again we enjoyed a splendid, though simple, farewell meal.

“I was planning to leave anyway, so this is a bonus for me,” I mentioned between sips of wine. “I have a good friend who seems to be involving himself on the fringes of a potentially violent miners’ rights group,” I confided. “Though I share their frustration at the wilful slowness of the political reforms, the corruption and the injustice, I cannot share their desire to use violence to completely restructure the political organisation of the colony.”

“You are not alone,” the priest looked concerned. “And there are a number of very good men able and willing to lead the drive for political reform – from men such as Humffray to Lalor. But some of the hot-heads – unfortunately many are from your country – are going to lead the diggers into unnecessary bloodshed, I fear.”

“My country is here now, and my fear is that the hot heads are the worst kinds of opportunists who, if they succeeded in overthrowing the government, are likely to replace it with an even more tyrannical one.” I went on to explain my argument with Ray and Sam, and our mood was quickly lightened by the image of Sam shovelling dirt like a steam engine.

I hedged around the question I was going to ask, until after I had a chance to make a donation to the poor-box. “I wonder, if I give you the address of a friend in Melbourne, if things seem to worsen so far as the violence is concerned, if you could write

and let me know, so that I might try to again persuade my friend that his participation is a mistake?" Smyth immediately agreed, after thanking me for my gift.

"By the way," he continued, " Lucien Chartier has been inquiring about you, and sends his regards. He seems to have taken a great liking to you, and said to invite you to stay with him for awhile, if you would like to."

"You know, that could really appeal to me. He had some interesting ideas that I'm beginning to be interested in. I wonder where he would stand on political issues."

The priest gave a slight frown, "Remember, politics never saved the world," he mimicked the French accent of his colleague. Then, after the meal was cleared away, we wished each other well, and promised to keep in touch.

After we had sold our shares in the mine to Ray and Sam, and packed and shipped the possessions which we wished to keep to Moya, we set out for Melbourne on a luxury coach. In three days we were there.

Strangely I had some misgivings about my future and, though thankful that I had enough money to last me a long time, I was rather irritable, and for some reason could not look forward to the usual round of wine, women and song enjoyed by most lucky diggers and their friends.

It was clear that Moya and Pierre had things to sort out, so after a day I decided to visit Father Lucien Chartier in Eltham, some miles out of town. It was easy to make my excuses to the now affectionate couple, and make plans to leave the following day. I took only a few books and clothing to last for a week or so, and set off to see the man who reminded me so much of my natural father.

He met me as he had met my friends and me before. This time it was mid-afternoon on a weekday. On the way through town I had stopped to acquire some food and a few bottles of wine for celebratory dinners. A couple of bottles of good Napoleon brandy would put us in some reflective moods, I thought. I recognised my own need to



plan my future, to set my sights on new aspirations, and to take stock of my inner life and needs from a mature point of view.

The old priest gently chided me for my extravagance, but I could see that he was pleased, and suggested I stay for a few days to see what his life in the bush was like. During what was left of the day he did not speak much, leaving me to my own devices, as I pitched my small tent in a corner of his small yard. I had felt that a horse and buggy was not too extravagant for a man of means, so I also had to tether and feed the animal.

From the way that Father Lucien petted and spoiled the horse, it was clear that he loved animals. While I set up my camp he walked off into the bush, explaining that it was his time to “meditate”, though what he meant by that was not clear to me. He started off into the countryside close to the clearing, while breathing deeply, and muttering what I suppose were his prayers. I couldn’t help thinking what a strange man he was, but he was a person who exuded a deep and rather refreshing calmness and peace that really appealed to me.

That night I cooked him a meal of fresh beef fillets, with vegetables, and wine sauce. We ate in his hut, and I knew that he was touched that I had tried to please him, but really it was an act of remembrance for my father, wherever he should be. Thinking about home depressed me even more than the argument with Sam, which had not really been improved by our lucky gold strike. My increasingly sombre mood did not escape my host.

“I’ve noticed that you seem to be preoccupied with something that concerns you. Can I help?”

“I think you could help if only I knew what was wrong, but I just have a vague feeling of dissatisfaction, or rather depression. I think it concerns changes in my opinions and way of life for the past few months. As you may know, I became very friendly with Father Smyth in Ballarat, and have found my ideas on spiritual matters changing. At the same time, I have become disenchanted with the idea of political reform at the same time. My friend Sam seems hell-bent on joining a revolutionary group – despite his own history of enslavement and mistreatment not only by governments but by individuals. Yet he

seems willing to support the very type of men who once were his slave masters. For my part I cannot see that the opposition of free men to a method of taxation can ever justify even the contemplation of violence. All this depresses me!"

"I can understand your frustration – dare I say confusion," the old missionary/professor slipped into lecturing mode, and unconsciously into French, "because it is not easy to combine love for God and our fellow human beings with our love and desire for justice and compassion. But as you are here, and as that is what seems to be preoccupying you right now, we could spend some time over the next few days considering the problem."

It may seem strange that I should be attracted to this proposal but, as the man fascinated me, and as I had become interested in things theological, I was keen to take advantage of a kind of retreat with this former professor at the University of Paris. We covered quite a bit of new ground in those few days, and he summed things up on the evening of my last day with him.

"Essentially, then, we agree that we were all created equal, with no preference given to any single gender, race, or class of people. Furthermore, the creation process did not cease in prehistory, but continues to the present time, and beyond into the future to eternity. Included in this creative process is not only human kind, but all animate and inanimate objects. The laws governing this universe are not only scientific, but must include spiritual and ethical questions, thus we must treat the world and all the creatures that dwell on it with compassion and justice. Coming to your own questions, Jonathan and Sam disagree about where, how and with whom to fight for justice. Sam seeks justice through work with a rather bellicose group of republicans who oppose the unjust taxation of gold miners."

"Jonathan, on the other hand, considers that the one attempt that he and Sam made to bring about compassion and justice to another runaway slave in San Francisco cost him so much personally that he is unwilling to become involved in any justice or compassion right now, and understandably so. Do you agree, and if so, do you want to know what I think?"

“Yes.”

“Lucien thinks that you both are free men, equals of all other men, and that you should both freely follow your inclinations regarding what constitutes compassion and justice. Therefore, I think that you have done the right thing to go your separate ways for the time being, who knows about the future. Sam’s future problems are likely to involve developing the insight as to what cause to wholeheartedly support, while yours will undoubtedly involve the extent you should involve yourself in any cause. Stop letting it worry you, and get on with your life, now you have enough money to choose.”

I had to think awhile before replying. “Your analysis, as usual, is startling, but on reflection quite correct. I just want to enjoy being a free man for awhile, with no causes to have to work for. I want to enjoy myself. Is that wrong?”

“Meister Eckhart once defined salvation as, ‘When we marvel at the beauty of created things and praise their beautiful Creator’. Why not go away and do that for awhile, and give thanks that you have been given enough wealth to choose what you want to do.”

And so I did.

## CHAPTER TWENTY FOUR

First I headed back to Melbourne, and stayed with Pierre and Moya, who were now living together. The other lodgers had gone, and Moya suggested that I stay in one of her spare rooms. Pierre confided in me that she really wanted me to stay, at least until they were able to arrange a wedding, for the presence of other 'lodgers' as well as he would enable them to keep up appearances. I offered to help him set up his studio in the city. I had decided that so long as I could be a help I would stay, and because Moya would not consider my paying rent, I frequently paid for an outing of some kind.

The celebrated and notorious Lola Montez had recently arrived from the United States via Sydney, and was performing at the Theatre Royal, Melbourne. The reputation for outrageous behaviour by Lola had preceded her, and I therefore obtained three tickets to see her perform her 'spider dance'. We were not disappointed: after the performance Moya claimed mild affront, but stayed for the dance, giving it her rapt attention, as did Pierre and I. I had certainly seen worse in New Orleans and Californian bordellos, but not in a theatre with a mixed audience.

The dance itself commenced when Lola came onstage in a short dress over many petticoats, but with a spider mask, and copied the motions of the insect weaving a web, from one side of the stage to the other. Suddenly, she tore off her mask, and portrayed a woman caught in the spider-web, and slowed her movement to mimic the antics of a woman falling to the stage as the venom overcame her. Once again, unexpectedly, the slow music changed to a faster tempo, to which Lola responded by leaping to her feet, searching each layer of her petticoats for the offending spider while performing a series of ballet movement or pirouettes. Then, having located the offending bug, she threw it to the floor, stamping it to death with gusto. As the men in the audience roared, Lola discovered another spider in the lower layers of petticoats, and shook the entire costume like a multi-coloured fan. As the tempo of the music increased, Montez came to the innermost layer, and having rid herself of the final offending pest, she lifted her skirt with a triumphal but brief revelation of her shapely legs, and fled offstage.

Most of the men in the audience stood and applauded, while many of the women present sat silently, while a few clapped sedately. Pierre and I stood, then sat with the smiling but unenthusiastic Moya. When we returned home, Moya made it quite clear that she had enjoyed both the play *Maidens Beware* and the dance which followed it. At least she was broadminded enough not to be angry at witnessing exactly what we had all anticipated, a very mild version of a striptease.

A controversy raged in the newspapers concerning the antics of Lola Montez, and the publicity meant full houses at the Theatre Royal. The next week I bought tickets for us to see the wonderful parody of the spider dance by the actor and comedian George Coppin. This man cavorted around the stage in a manic yet vulgar display, wearing a similar costume, accompanied by similar music as the great Lola. He combined both the agility of the original performance with the clumsy and bumbling contortions of the skilled mimic. This amazing seemingly endless act was performed before a full house, literally rolling in the aisles with convulsed laughter.

This active cultural and artistic climate of Melbourne was a reflection of the city's growing wealth, population, and the influx of non-British migrants. It was an exciting place to live, and I searched for a suitable business to establish or buy into, but wanted to act wisely, so took my time looking around.

It was now early spring, and the weather slowly improved, and it was possible to enjoy trips out into the bay from St. Kilda, and to picnic on one of the numerous beaches on the Mornington Peninsula. Sometimes we went to the mission run by Father Lucien, and though Pierre had little respect for the priest, he came along to please Moya and me.

It was during these weeks that the climate of political conflict worsened on the gold fields, and I needed to be advised by the priest about what my responsibility to support Sam and his friends might be. I was dismayed when in late September the *Argus* reported that the diggers were incensed by the increased frequency of digger hunts, apparently on the Governor's orders. Then, in early October a digger named Scobie was murdered by a local publican. When the accused murderer was tried before a blatantly biased magistrate, the diggers burned down the Eureka Hotel, owned by the publican. Three

diggers were then arrested, and charged with having rioted. Naturally I was concerned about these events, as I worried that Sam would be inexorably drawn into riot, rebellion, or revolution.

Still Father Lucien patiently advised me to follow my instinct to stay away from Ballarat, and to continue my current way of life. He felt that there was probably little I could do to influence Sam, and also that I needed to think about my own problems. “Grasp the opportunity to be free,” he advised, “or, as a wise man once said, ‘Love God and do what you like.’”

This sounded like good advice to me, so I took it.

Pierre and Moya frequently socialised with the French Consul and his family, and the French photographer was able to benefit from this friendship now that we had almost completed the rental and fitting out of his studio. In just three weeks we had the salon ready for a grand opening, and my friend insisted that I attend. I must confess that I was reluctant to do so, for I thought that some of his clients might hold the racist attitudes of some other segments of colonial society. I should have remembered that Pierre prided himself on his artistic and bohemian ideals.

“You will come for my sake,” he stated imperiously. “After all, I would not be here if it were not for you. So say no more about it.”

The place looked good on that evening. Rather floridly decorated in shades of red and pink – I had joked that it looked like a bordello – and with several flunkys serving canapés and champagne the evening went well. My friend would be a rich man in short order I thought, for the wealthy and *nouveau riche* had taken up the fad of having small family photographs printed on visiting cards, which they exchanged at social events. Towards the end of the evening, as I stood alone regarding the wealthy at play, the beautiful wife of the French Consul approached. We exchanged greetings, then began to discuss the works of Dumas.

“Have you read them in French?” she asked.

“Of course. I think that they lose their immediacy and excitement in translation.”

“He is a friend of mine, you know. A really charming man, like yourself.”

Somewhat taken aback, I accepted her compliment, but could not help wondering if she meant skin tone or culturally. Before I could ask, she spoke quickly, quietly, and in French.

“My husband asked me to request you to call on him as soon as possible, at his office, and to ask Pierre to come with you. He wishes your visit to be as discreet as possible, so if you could call at nine tomorrow morning, that would be appropriate. Could you?”

I was free, and thought that Pierre might be free, so I agreed. “Yes, if Pierre is not free I shall come alone. May I ask what it concerns?”

“Alas, it is quite confidential,” she said mysteriously, but with her beautiful smile, and excused herself.

At about ten, Moya, Pierre and I sat drinking a last glass of wine before tidying up. The photographer was excited by the number of people who had already made bookings for portraits, but seemed surprised when I asked if he were free for a nine a.m. appointment. I explained how the Countess had approached me, and Pierre agreed to accompany me in the morning, with only a few muttered complaints.

Next morning we found the door to the small, rather pokey office of the Consul was ajar, but on our entering, the Count closed and locked it. As he cast conspiratorial glances over his shoulder, I could not help but think that this was the last man with whom one would want to plan covert activities. I don’t know why that thought should have crossed my mind, perhaps it was foresight.

“Thank you both for coming. Incidentally, what a splendid occasion last night was. Much business?”

“Plenty.” Pierre was not a man for words when waiting for explanations.

“I thought it better for Celeste to talk to you, because I didn’t want to be seen by some of the other members of that august body the Melbourne Chamber of Commerce see me talking to you.”

I was half out of my chair in outrage, when he motioned me to sit down, quickly apologising. “Sorry, no, I did not mean that at all, but let me explain.

“At our last meeting there was a group of Americans, including the Consul, Tartleton, and a few other traders like Train, who, late in the evening, after a good meal followed by brandy, were in a group taking quite loudly. I was one of a group of British officials, who like myself spoke softly and discreetly in order to listen to what the American’s were discussing. From what they said, the Governor is concerned about the politics of the diggers, and their opposition to taxation and land system. He has decided to lay down the law even harder.

“Tarleton mentioned that there were a number of police spies within the various groups and committees demanding miners’ rights. The American interests were being served by a group of Californian diggers, and a military man who had been sent out from Washington with the purpose of protecting Tarleton, and working for him. Please realise that it was difficult for me to overhear all of the conversation, but from what I did hear the American business community is heavily involved in some republican plots. However, they are also protecting their interests in case any uprising is defeated by the British. A particularly objectionable and loud man, with an almost undecipherable accent said, and I quote ‘There are some niggers involved, and we’ll line ’em up for responsibility if necessary.’ I thought I would pass this on, as Pierre has told me about Sam and the argument you had before you left. I thought you might want to warn him.”

I sat back stunned. Had it not been for this kindly man and his wife, Ray and Sam might be unaware of their great danger.

“I can’t thank you enough. Now I understand your need for discretion. Could you advise me on what my best course of action might be?”

He seemed taken aback, but quickly recovered his *savoir faire*. “I think it is important that you warn your friends as quickly as possible. But I think that it is essential for you to continue your open hostility to violence. There are some very good men on the goldfields who would share your position – men such as Humffray and Lalor. I would beware of most Americans – for no names were mentioned the other evening. Other than



that, could you make contact with any members of the French community, and cautiously warn them that there may be police spies, and to avoid intemperate language and behaviour. Meanwhile, I'm preparing a notice to put in the press warning any French citizen that they owe allegiance to Great Britain while they are here. I don't intend to act officially right now, but I want to be prepared to help any Frenchmen who might become entrapped."

We both rose to leave, realising that the sooner we were out of the office the better it would be.

As I shook his hand I promised, "I'll be in touch through Pierre as soon as I have any additional information for you."

The rest of the day was spent preparing for yet another trip to Ballarat.

That evening I boarded the nonstop coach, and suffered the tortures of the long trip over impassable roads. The journey was taken up with plans: how would I approach Sam and Ray, how would I convince them of the danger they were in. What would I do to earn a living. This time I was determined that I would not be a digger. Intelligence work was much more exciting, but it would not pay the bills, and I would have to have a cover to gather information about the plans of the plotters overheard by de Chabrilan. The only cover that I did not want was dirt. Nor did I want to live with Sam and Ray.

## CHAPTER TWENTY FIVE

I bought a small tent and the requirements of domestic life, before going to visit Ray and Sam at their familiar hole in the ground.

They seemed surprised and not altogether delighted to see me back, so I quickly assured them that I had given up the mining profession, and was looking around for some other work. This led them to assume that I had spent all my money in high living. I chose not to let them know that I still had most of the money. I told them what I intended to do.

"I don't plan to dig any more holes, so I've got my own tent. I think I can earn my living from cooking. After all, there must be someone looking for a cook other than A'loo. I know nothing about Chinese food."

They laughed politely, and I could see that they were relieved that I didn't want to work or live with them – I was glad too.

"Have you got any partners to replace Pierre and me?"

"We have an Irish new chum, Patrick. We've just expanded to the three of us, and the yield is not too bad – I think we hit the lead, but by the looks of it we may have to go a lot deeper for it to really pay off. Then all we have to do is keep following it," Sam answered for them. "For the last month the traps have come around nearly every weekday instead of just once or twice a month, hunting for licences. So if you do intend to stake another claim, or go in with another group, make sure you get your licence. But I forgot that you are a religious man these days."

I paused before responding to his jibe. "Oh, I may go to mass, but I still enjoy wine, women and song. I even hobnobbed with the great and powerful when Pierre opened his studio. Any other news?"

I was surprised that the usually taciturn Ray responded. "Not much other than the murder of a digger, Scobie, outside the Eureka Hotel. You remember what a dangerous place that was. Then the coroner let Bentley, the publican, off Scot free. A few days later Rede, Johnstone, and that crooked bastard D'Ewes held their own little judicial enquiry,

finding that Bentley had no case to answer. So much for British justice, everyone knows that D'Ewes is a silent partner with Bentley in that pub."

"Did you read about how ten thousand of us diggers burnt the place to the ground – it was in all of the papers? That should give the Governor a few things to think about. The only trouble was that the bowling alley next to the pub was also burned down. Shame really, the man who owns it is also an American." Ray clearly enjoyed telling me this exciting news.

I confessed that I had heard some of the story, but that I had not had to try too hard to avoid reading newspapers in the last few weeks, hoping that they would think I had been too busy spending my share of our strike.

This gave Ray the opportunity to continue to recount in detail the ongoing strife between the diggers and the government officials. "All of the traps and magistrates are in on the corruption, and things couldn't be much worse. While all of this trouble about Scobie's death was going on, that crippled servant of your mate, Father Smyth, was visiting a digger too sick to leave his tent, and the traps came around on a licence hunt. As you know, besides being crippled, he's not too bright, and he doesn't speak good English, so he didn't explain that he was bringing food to a sick digger – not that the traps would have cared about that! Anyway, the traps arrested him for not having a licence, and made the poor bloke limp to the camp. He was released on the payment of five pounds for his bail by Father Smyth. But when Smyth said the man was his servant out visiting a sick digger, they dropped the charge of not having a licence, and charged the poor bugger with a trumped-up charge of resisting arrest, and fined him £5 for that! As though a crippled simpleton would resist an armed trap! All of the traps as well as the magistrate openly insulted the priest, a good man, as well as his servant. Even the Protestant diggers are up in arms. We've all had enough! We are planning a protest meeting this week, so why not come, and maybe reconsider your position?"

I decided that I wouldn't tell them about the police spies yet, because it would only stir things up more. I kept the conversation to a discussion of where I might pitch my tent nearby, making it clear that I wanted to remain friendly, but to be able to go my own way.

I stayed non-committal about going to the meeting. After making plans to visit them again later that day, I left.

I took time out to visit Father Smyth, to let him know that I was back.

"I've heard about how the traps treated yourself and Johann," I commiserated. "How are you both now?"

"Oh he was shaken up a bit, and I must confess that I was insulted and angry at first, but the situation is becoming so explosive between the diggers and the authorities – I don't know what to do. But how are you doing? – I had the impression that you never planned to return. Why are you here?"

I was impressed by his perception, and the degree to which this young priest seemed to understand each individual in his congregation. "I wouldn't have returned had I not heard strong rumors of police spies, and suggestions that there might be a crackdown on the diggers. So what do you think?"

"As I said, things are explosive, and there is a meeting to be held in support of myself and Johann following mass this Sunday. I'm in a bit of a quandary about the degree to which I should participate, especially after the burning down of Bentley's Hotel. I don't want to insult the diggers, for I was outraged too and share many of their grievances, you know the questions of justice and compassion are central to the priesthood. But on the other hand I have to be very careful not to make things worse, so the last thing I want to do is incite them further, for as we both know there are a few quite violent diggers, though most are peaceful men such as you. I would rather not attend if it were to make matters worse. What advice would you give me – I value your opinion, because I know that you oppose violence."

I was pleased by his confidence in me, so I honestly explained that if he failed to attend, the diggers would be even more insulted, for both he and Johann were held in great esteem by men of all denominations, because of their humanitarian work – work on which Johann was occupied when he was so cruelly attacked by the traps. Father Smyth seemed surprised by his popularity.

“When I went to speak on Johann’s behalf the police were quite insulting to me, and I naturally thought that they felt safe in expressing the opinions of the Protestant majority concerning us.”

“Father, I have never met a single person, Protestant or Catholic, or anything else for that matter, who has ever said a bad word about you. Remember, that though they don’t all go to mass, there are many Catholics here between the Irish and other Europeans. While some Protestants may disagree on questions of dogma, most diggers appreciate your kindness and caring for *ALL* members of the community. Perhaps we might go together, and hear what the diggers have to say. But to change the subject, do you know of any jobs I could take up, as cover while I keep my eye on Sam? I was thinking of a chef or cook. Do you know of anything?”

He thought for awhile, then surprised me with a suggestion. “I think the hotels are always ready to pay high wages to a good cook. Apart from that, the only thing I’ve heard of was that a friend of mine, a Prussian Jew by the name of Eddie Thonen, is looking for a partner in his lemonade selling business. He has been trying to operate the lemonade round as a sideline, but it is beginning to be too much to do both jobs. If you catch up with him, mention my name. He’s a good fellow, good chess player, and very honest.”

His suggestion appealed to me, for it would leave me free to wander around the diggings on legitimate business. In any case I preferred to be a partner than an employee working all hours in the hot kitchen of a café or hotel. So I said I’d look out for Edward, and check out the job.

I tracked the lemonade seller on his rounds near Eureka. He was an affable, easy going man, and was delighted when I mentioned that Farther Smyth had told me he was looking for a partner, and that I might be interested.

“Yes, he’s a very good friend, and not the least concerned that I’m a Jew. Unlike some of the people back home, he accepts the fact that we are not all the same. For example, I became interested in Catholicism as a child in Prussia, where it was sometimes necessary to be able to conceal my Jewishness, especially during *pogroms*. So I’m interested

in your religion from an intellectual point of view, and I often go to hear the service, and remember my childhood. Also, Father Smyth is a very humanitarian man.”

In his heavily accented English, he finally got around to his lemonade business, suggesting that we split the work, the costs and any profits. “Making the lemonade and selling it is too much for me, and my mining mates are complaining that I spend too much time on the lemonade business. With a partner I could cut the time preparing it in half. We might be able to borrow another cart so that the two of us can cover the diggings. Where is your tent?”

I told him that I wanted to stay near friends at Eureka, and he was delighted since he also lived close to the claim which he worked with his mates in the same area. He operated his lemonade business from his large tent with a hearth and chimney, so I suggested that if we came to an agreement, we could continue to work from his tent on a trial basis. This suggestion pleased him, as the two of us could make the lemonade at night, and I would be free to cover most of the Eureka diggings during the hours he worked his claim. He promised to show me how to make the soft drink, and to take me around for a few days to introduce me to his customers. While he would work on his claim most days, he agreed to also take some of the hot days off to sell our product to the thirsty diggers.

He had figured out the cost of buying into the partnership. It sounded very reasonable to me, so I said I’d give it a try, and paid him in cash. We sealed the partnership with a handshake, and at a nearby German hotel we drank a thirst-quenching light beer, then decided that I would start work the following day. This gave me sufficient time to set up my tent near Sam and Ray, before calling on them to tell them of my new enterprise.

Sam seemed his old self. Shaking his head and wagging his finger under my nose he half-seriously cautioned me, “You’ll never make a living out of it, Jonathan!”

But I did, and on a weekly basis, a better one than I made from any mineshaft.

I was astonished to discover that the mere selling of lemonade opened up a new world to me, for I was quite a good salesman. Pushing or pulling a cart of boxes

containing paper twists of the soft drink powders through the heaped earth and treacherous holes in the ground was good exercise. Under the cart a couple of large water containers and a few chipped enamel mugs swung from hooks. Every few yards I would pause for a rest, and yelled "lemonade-o", in case someone working deep in a nearby shaft hadn't heard my previous calls. I would exchange a few words or banter with each customer, and followed Eddie's practice of allowing regular customers credit, so that they did not have to come up with the threepence or sixpence every time I called. At first I doubted that I would ever be paid, but to my amazement all of the diggers settled their bills weekly. In addition, I made lots of friends, talking and joking with them, discussing the hated licence hunts, and their resentment about a whole range of political disputes that simply had never interested me before.

While I was mining, I had been obsessed with finding gold, and had been disinclined to think about social or political issues. Other than that, watching out for myself and my mates was of primary importance. At night I had been too tired to do much other than read or rest. Thus the perspective from the bottom of a mine shaft had been a narrow, lonely one.

Lemonade selling opened up new ways for me to interact with the wider digger community. This contact made me realise that the diggers of Ballarat were, by and large, quite honest and hard working, and not the wild bunch of misfits so frequently criticised and laughed at in letters to the newspapers. Much of my lemonade was sold to teetotallers, and their numbers at Eureka surprised me. Among the diggers were men from nearly every country, of all religions; there were educated men, graduates from many of the world's finest universities, as well as illiterate peasants. There were honest men and criminals; there were revolutionaries and conservatives, both violent and pacifist. Selling lemonade brought me to the realisation that my community was a microcosm. More importantly, over the short time I hauled carts of the soft drink around the Eureka lead, I became a member of this community, and few diggers seemed to notice, let alone care, about the colour of my skin.

Thus I was able to discuss religion and politics with my customers, though I saw the wisdom of agreeing with each of them, and of scratching or nodding my head in what I intended to be a thoughtful way. It paid to be agreeable. Not all of the diggers were what they seemed. One stocky man in miner's dress confided that he had been a magistrate in Scotland. Some would talk about the great actors or operas they had seen perform. This gave me the opportunity to describe Lola Montez' spider dance, and Coppin's parody of it which I had seen in Melbourne. Others talked of literature and books. I soon realised that all types of people from all over the world had come to Ballarat to find gold, and I was proud that most of them became my mates.

A few of the diggers found humour in a partnership between a Jew and a black man, and were not afraid to kid me about it. But their teasing had no edge of real racial intolerance or hatred. I was happy to go along with their joshing in order to sell more lemonade powder. I felt happy moving among peers, but no longer mining for a living, as they did.

I felt that I had come home.

Eddie and I would spend each evening, except Saturday, mixing up batches of lemonade powder for the following day, then each taking a cart full of containers, and selling the drink by the glass to thirsty diggers. It only took a day or two for me to learn the ropes from Edward, who was as good-natured a partner as one could ask for. He would placidly smoke a pipe of pungent tobacco, while waiting for pots of water to boil, before adding the dried ingredients. During those evenings, as we worked together we became firm friends. He taught me how to play better chess, but continued to defeat me in the game, which was his favourite pastime.

I took the opportunity to learn a few words in German, but my progress was slow. He was not an aggressive man, totally unlike the stereotypical Prussian. He had been forced to serve for a short time in the army, and had hated every minute of it. On the goldfields he had picked up many of the ideas of Chartism, but like me he was a pacifist. During our partnership we never once argued, and as we had similar religious and political ideas we had a great deal to discuss during those turbulent few weeks of our partnership.



## CHAPTER TWENTY SIX

Eddie and I attended mass on the first Sunday after we had formed the partnership. After the service we told Father Smyth that we were now in business thanks to him. As there was to be a protest meeting right after mass, we suggested that we have a celebratory meal the following Sunday. The priest asked me to wait a few minutes while he greeted his parishioners, and after the last one had left, he came over to Thonen and me.

"I'd like to take you up on the invitation next week. Thanks. Were you aware that they arrested three diggers for burning down Bentley's yesterday? That's caused more uproar, and there's to be a large public protest meeting after our meeting later today, to raise funds for their defence. Incidentally, you are coming to this meeting today?" He seemed anxious that we should be there.

Glancing at Eddie to see if he would mind, and being reassured by his nod, I agreed. "Wouldn't miss it for quids," I assured him.

None of us were prepared for the number of diggers who packed themselves into the small church hall on Bakery Hill. We recognised most of the Irish diggers from the Eureka lead, many of whom were seldom seen at Church, but there were a few diggers representing other denominations. Before the meeting Smyth introduced me to an Irish digger called Peter Lalor, who was an engineer and part of a group operating a very deep shaft – nearly one hundred fifty feet below ground, he told me. He seemed to know Edward, and we all sat together, close to where a mate of Peter's, Timothy Hayes, stood to call the meeting to order.

As soon as he had quiet, Hayes began a description of the events that had led us to this protest meeting. "As you all know, when Johann was out visiting a sick man on the Eureka, Trooper Lord entered the tent and asked for his licence. Not being able to speak clearly enough to please Lord, who, some might say, was too drunk to understand anyone, arrested poor Johann for being on the gold fields without a licence." Here some diggers laughed at the all too familiar image of the drunken police traps arresting innocent men,

but the vast majority of the audience hissed or muttered angrily, exactly the mood which Hayes wanted before he continued in even more emotional tones.

“When the sick man and others explained that Johann was too disabled to be a digger, but was a priest’s servant, this enraged the bigot Lord, who became even more insistent on arresting the innocent man. When Johann could not limp fast enough to keep up with the traps’ horses, Lord beat him up. No one would listen to him, and he was first fined five pounds by Commissioner Johnstone for not having a licence. Then this corrupt man changed the charge retrospectively to ‘assaulting a police officer in execution of his duty’, and still fined the innocent man the five pounds. Is this correct Father?”

Smyth stood and confirmed the truth of this story, adding, “Though I tried to speak in defence of Johann, every official, including Mr. Rede, refused to listen and turned me away, simply stating that the law must be obeyed.” The priest could not disguise his own outrage and disgust, and sat down, red-faced and angry.

Hayes then observed, “They should have a five pound fine for hindering a priest or his servant executing their duty to care for the sick! But the question is, what do we intend to do in protest at this abuse and corruption of power?”

There were several suggestions, most of them violent, before Lalor stood, and suggested, “Let us not hasten to violence, but I suggest that we prepare a formal protest for a small group of representatives to take to Chief-Commissioner Rede, and see what he has to say.”

Thus we unanimously adopted a formal protest to be taken on behalf of the entire Catholic community to Rede, by three representatives, who would then report back regarding their success or failure. As the meeting ended Father Smyth asked if I could call on him in the next day or so.

“I can call on you tomorrow afternoon, after I finish work about five thirty. Is that a good time for you?” The priest agreed, and we parted with another handshake.

Eddie and I made our way out of the Church hall, and were surprised to find ourselves among a multitude of diggers which had assembled to protest at the arrest of McIntyre and Fletcher, the men accused of burning down Bentley’s Hotel. I had never

been in so great a crowd, and it was almost impossible to hear the various speakers over the noise of the throng. There were many motions put to the vote that day, some to take up a public subscription to pay for their defence. Perhaps the most interesting motion was that which blamed 'inept camp officials' for the burning of the Hotel, rather than two innocent diggers: this motion was carried unanimously, amid loud cheers before the meeting broke up. That night the estimates of the size of the crowd at the meeting ranged between ten and fifteen thousand diggers.

It was exhilarating and frightening to be part of such a large group of people, for we all believed that we were in the right. The volatility of such a gathering concerned me, for I felt that it would not have taken much for the angry diggers to march to the camp of officials and put the torch to that, as they had already done to the Eureka Hotel.

When we met the following evening, Father Smyth said that he had just met the group of three reporting back on their formal protest to Mr. Rede. "Rede refused to even set up an enquiry to look into the mistreatment of Johann and myself, making the excuse that the law must be obeyed, and must be allowed to take its course." The priest was concerned that matters were getting out of hand, for a group of reformers had invited him to a meeting, specifically to show their support in protesting the insulting and unjust treatment of him and his servant. "They all seemed responsible men, so I have accepted their invitation to attend to address the meeting. I'm hoping that only a few Catholic diehards will attend. But I wanted to alert you to the meeting, and to invite you and Edward, should you be interested. If possible, I wish to dampen down the flame of resentment, and to work towards a peaceful settlement of some of these issues between the administrators and the rest of the community."

"I'll be happy to come." I assured him. "I've just been working with Eddie for a few days, but I'm enjoying every minute of it so far. Besides, it's an excellent cover for finding out what's going on around Eureka, just in case there are police spies giving information to the authorities. It might even pay off as a good investment."

Later I discussed the situation at great length with Edward, for I could not help agreeing that the gold field administrators seemed to be corrupt, and unwilling to even make either official or unofficial investigations into accusations of corruption. "I am a pacifist, but how long can peaceful citizens continue to be denied justice, without resisting more forcefully," I complained.

"I agree, and feel just the same. Believe me, I have experienced injustice as a Jew living in Prussia, and that is a state where even Protestants have few rights." The German then told me about the hardship of practising his religion in the Prussian army, and how delighted he was to be in Victoria. "Believe me, Jonathan, we are freer here than most diggers realize." He paused, then ruefully continued, "though it must have been even worse as a black slave in your country. What really angers me is when rabble-rousers pose as soldiers, ready to lead a revolution, when all I ask for is justice, without heavy-handed and corrupt officials applying unfair laws. I don't want a revolution!"

"Nor me. But I think these particular officials are going to keep pushing us into taking up arms against them. Besides, I've heard that there are police spies operating hereabouts. Have you heard anything?" "Not of police spies, for the German diggers would spot one a mile away. What really worries me is that there is a Hanovarian madman, a tall, gangling youth, called Vern who goes around brandishing a sword, and claims to have an army of hundreds of Germans ready to follow him into battle. He seems to be able to convince sensible men of these fantasies. He's like Don Quixote." He laughed, then continued. "There's a American called Mac something, who tells similar stories, and claims he's a graduate of some army college in New York, and there's a rumour that he is working for the American government stirring up revolution so that they can take over the country. That's all I know. How about that game of chess while the water boils?"

A few days later I met 'Mac something' at Sam and Ray's tent. His name was James D. McGill, a young, slight man with an engaging smile and personality. Ray

introduced me to him, and he opened the conversation by his habitual greeting of “What’s up?”

“Not much in lemonade sales today,” I replied, “but some interesting developments on the political sphere, don’t you think?”

“That’s true – in fact that’s why I’m visiting Sam and Ray, to enlist them in my California Rangers unit, in case we have to resort to arms in our own defence. Would you happen to be interested?”

It was difficult to dislike this apparently honest young man, with his easy manner, and his ability to sell an idea. So I replied cautiously, “A few weeks ago I definitely would not have been interested, but now I am as concerned as most diggers about the heavy handed methods of the government. What concerns me even more is the unwillingness of men like Rede to discuss our grievances, as well as the obvious corruption of both police and magistrates in recent times – particularly in the Bentley and Johann Gregorious cases.”

At this point Sam butted in to the conversation. “That’s quite a shift in your thinking in the last few weeks, Jonathan!”

“Don’t misunderstand me, I remain a pacifist, but I can’t help but be concerned about what is happening here, as well as on other fields, such as Creswick, Bendigo, or Castlemaine. But here it is reputed to be the worse, most dishonest administration of the lot. So I am interested in what plans you are making, because I’m still in the process of making up my mind.”

“I’m putting together a small defensive force, so far nearly two hundred of us, all Americans who are concerned about the current state of affairs. We are arming ourselves with colts, and have a warehouse of them stored away in Melbourne. We welcome every American, including you, to join and drill with us. If nothing else, it’ll scare the hell out of Rede.” McGill grinned, and smacked his clenched fist into his open palm to emphasise his point.

“I’m not convinced in the wisdom of organising armed groups, because right now I’m a pacifist, but I’m interested, and if things get much worse, I’d be ready to join. What about you guys?” I asked Sam and Ray.

“We’re both in as of today,” Ray responded enthusiastically.

“Well, as I said, I might change my opinion, so keep me informed. Meanwhile, as I cover most of the area selling lemonade, I’ll be happy to pass on any information that might be of use to you, if you like.”

“Oh, I’m in the process of putting together an intelligence section,” McGill said in a cool, dismissive manner, “but if you pass on anything you hear to Ray or Sam, we’d appreciate it. And of course, if you decide to join us, you’d be most welcome as a recruit.”

Not very likely, I thought to myself but, after thanking him, I left, and the three continued their discussion of military strategy while I lugged the lemonade cart along the Eureka lead.

That night, as Eddie and I prepared the following day’s stock of lemonade powder, I told him about my meeting with McGill. “I was surprised that Sam and I were asked to join, although to be fair to the man he was quite comfortable in our company, and certainly treated us as equals. But there is something suspicious about him, for I doubt that he could call on nearly two hundred Californians in the entire Ballarat area. Furthermore, why California? Unless he considers everyone Californian who came here via California. I also find it hard to believe that somewhere in Melbourne is a warehouse of colt pistols that the government is unaware of. On the other hand, if Vern can raise nearly five hundred Germans...”

My musing was interrupted by Eddie’s laughter. “Jonathan, I have met Vern, and I tell you he is off his head. No one that I know has signed up to join his unit, and the only reason he claims to have five hundred men is to outdo the boasting of McGill and his two hundred. Believe me, this man is a serious threat to digger miscalculations of being able to take on the British administration and the trained regulars and militia groups which could back them in a fight. I’ve seen and heard of many other popular uprisings, from Canada to Paris, from Poland to England, ruined by cowardly men who boast of their own leadership of vast armies, that exist only in their dreams. Let’s agree to stay away from such pipe dreams until things get a lot worse. Let’s fight our battles on the chess board, because I really like always being the victor without spilling an ounce of your blood!”

I breathed a silent prayer of thanks for this docile and intelligent man who was my business partner, before sitting down to receive yet another thrashing at the game I always lost. I even enjoyed it.

We wished in vain for an improvement in the political life in Ballarat. Licence hunts continued, diggers were abused, and frequently assaulted by the increasingly arrogant officials who governed our lives.

Mr. Rede's stock answer to any reasoned approach was to hide behind the unjust laws that he and his staff enforced. He could not enquire into the Johann Gregorious case because "the laws had to be enforced." End of discussion.

The diggers were not about to take this treatment lying down, and large public meetings were organised on an almost daily basis. What disturbed Eddie and me was that the diggers began to divide into two parties, those who advocated outright violent resistance, while more reasonable men seeking non-violent constitutional reforms were increasingly shouted down and silenced at the public meetings. If there were police spies present they must have filled their notebooks with threats of violent sedition. Mind you, if anyone had been detected acting as a police spy, the angry diggers would have dismembered him right there and then, so great was their rage.

Leaders such as Humffray, advocates of peaceful, constitutional reform, while tolerated at the early meetings in late October and early November, were themselves publicly insulted and threatened with physical violence at the meetings in late November.

The diggers had a stock reply to those among them who opposed violence, which went:

"Moral persuasion is all humbug  
Nothing convinces like a lick in 'the lug'".

This gem was first recited by one of the leaders of the violent faction, Thomas Kennedy, a powerful and belligerent speaker.

I attended many of the most important meetings, and as time went by the number of diggers increased not only from Ballarat itself, but from nearby areas such as Creswick as well as from Mount Alexander, and distant towns like Bendigo.

It was in these deteriorating political circumstances that a group of diggers organised the Ballarat Reform League, dedicated to the principles of manhood suffrage, proper representation in government and administration, the abolition of all licence fees, and the abolition of all gold commissioners such as Rede and Johnstone. Eddie joined before me, but I soon followed his lead. Every time I saw Ray and Sam, they seemed more and more committed to violence, and regularly trained with their comrades in the California Rangers. By early November I decided to return to Melbourne for a week, to attend to some business there. After arranging for Eddie to operate the business in my absence, and agreeing to bring back a few supplies, I set out on the long coach trip.



## CHAPTER TWENTY SEVEN

I arrived in Melbourne tired, hungry and irritable.

But as usual Moya made me welcome, and though it was late morning, she had coffee and a light breakfast to keep me going until Pierre came home for lunch.

“How’s the business going?”

“Very well,” replied the beaming Moya, “and getting better by the week, if we have much more growth, he may have to take on extra staff – though that costs a fortune, as you know. But Pierre told me about what Chabrillan told you, how have things been with you?”

I had just started to bring her up to date, when Pierre came home, looking for his lunch, so I took the opportunity to bring them both up to date on what Sam and Ray were doing, and told them of my partnership with Edward. “The reason why I came down was to let you know what is happening politically, and things don’t look good. There seems to be no give or take on either side, and the diggers – quite understandably, are beginning to arm themselves. What concerns me is that there are a couple of rabble rousers, one an American called McGill, and one a German hothead called Vern, each raising private armies. No one seems to have the answer. Father Smyth is ignored, if not insulted by the administration, magistrates and traps, but very well respected by the diggers of all denominations, though he has only been there since early August. He is trying to stay on side with everyone, but we both fear that one of these vast public meetings could simply walk to the traps camp, and burn it to the ground. They are that angry”.

Pierre promised to pass on this information to de Chabrillan, before asking, “What have you heard about police spies?”

“Well, the place is rife with rumors, but no one has mentioned them. When I asked my partner, he thought the Germans, and probably most of the other European communities would easily spot *agent provocateurs*. I think though, that some of the cleverer traps might be used as informers or spies. Were it not for Edward, Sam and Ray, I think I would stay away for a few weeks, because if things continue the way they have been, there’s

going to be a riot up there. There's even talk of a warehouse in Melbourne full of guns which the Americans are planning to use. Have you heard anything about that?"

"No, but the papers are full of the possibility of violence, and de Chabrilan will be really interested to hear your news. What else brings you here?"

"I've decided that we may have to leave Ballarat in a hurry, so I've decided to convert my funds into ready cash should we need to use it in an emergency. Do you have a safe?"

"Yes, and it's nearly empty. Do you want to store something in it?"

"If you don't mind, I'll take a few days to liquefy my assets, and store a few documents and stuff in your safe, if it's secure."

"It's nearly as big as this house, set in concrete, and has a big lock," joked Moya.

"Yes," said the smiling Pierre, "we are relying on this business to make our fortune, and to pay our way back to Paris, eh Moya?"

I was surprised that I was able to sort out my affairs in a single day, so on the third day I headed off for a short visit to Father Chartier, before returning to Ballarat. He was surprised to see me, but listened to what I had been doing with great interest. His reaction was so similar to that which I might have received from my own father that a lump came to my throat.

"I think you have done very well to set yourself up in a business so closely associated with the diggings that it is easy for you to move around, and not to be an outsider to what the diggers are planning. Eddie sounds like a more compatible companion to you than Sam right now, but you do keep in touch with your old friend?"

"I see him nearly every day. They even buy my lemonade. But he is dedicated to the idea of fighting for his rights. I think it is far too early for that, though I have come around to agreeing that some sort of justice and rights must be given to the diggers. I'm really quite confused, and feel that if pressed, I might just take up arms."

"Be careful, my son, of rushing down that path," the priest cautioned me. "And how is Father Smyth, what does he think?"

“He’s as confused as I. It’s the spiritual questions that brought me here for this quick visit. I thought that the ideas with which you are so familiar might shed some light on my own problems and decisions. Do you have some time to help me?”

“That is my work, to make time for you. But I think that by talking, and showing you some of my academic work, I might show you some other useful things. But be sure to tell me if I am boring you, or to interrupt me if I am going too fast or if you have questions.” The kindly old man smiled, composed his thoughts, then began to teach me as he had his students in Paris.

He started by telling me of his work there. “As a young priest and teacher I learned to treasure the mystical tradition, and started to meditate, this led to an interest in comparative religions, as well as eastern philosophy. Then I became interested in the twelfth to fourteenth century, when many of the ideas of eastern religions entered European philosophies and culture. And, as I explained last time you were here, the study of this period led me to the works of the Rhineland mystics, most importantly Meister Eckhart.” He then launched into a description of his travels after he had left Paris. “I knew that I had to report to my new Bishop in Australia, but I arranged to spend some months in Macau *en route*. There I really learned to meditate, and it has become an important part of my daily routine. If you like, I’ll teach you later.”

The man was a born teacher, and after noting my nod of assent, he continued. “The theology of Eckhart is appropriate for modern times. I have mentioned the paths of recognising and giving thanks for creation, for the natural world, and all creatures. He also encouraged men and women to explore their darkness and unknown Creator. The mystic’s third path leads to a person attempting to emulate the Creator by living creatively. Eckhart suggests that to seek to be as creative as possible is to nurture the divinity that is within us all. A fourth path requires the believer to creatively apply compassion and to celebrate justice. I suggest that we talk about these in sequence, or do any of the paths seem particularly appropriate to you?”

He had been so engrossed in his explanation that he had not noticed that he had started to speak French, and though it amused me that he had forgotten his vow, I did not mention it. "I think I should like to explore with you in depth paths three and four."

"Why?"

"Because I should like to know what Divinity there might be in me, and in applying it to the circumstances of my life, I might solve a few problems."

"Indeed. Well, consider this quotation from a sermon I've just translated from German into French – 'Every human person is an aristocrat. Every human person is noble, has royal blood, born from the intimate depths of the divine nature'. What do you think of that?"

"Does that also apply to a mixed race, illegitimate, runaway slave, Father?"

He took my question seriously, something I didn't really expect him to do, but on the other hand, I interpreted it as an indication that he understood where some of my confusion and uncertainty might be coming from.

"It applies to everyone, of every religion, of every race, no matter what the sins of their parents may have been. We live in a created universe, and the Creator's love extends to all creatures. After all, a man who became a saint of the Church wrote of and spoke to 'Sister Moon and Stars', 'Brothers Air and Wind', to say nothing of his praise of his Creator, through 'Sister Water'. Strangely, some of the European members of my flock cannot understand or accept these ideas of the beauty and sanctity of all Creation, and of a loving Creator who comes to us with blessings, and not judgement. Such people usually think of Francis of Assisi as cute and rather eccentric, and don't take such utterances seriously. But all of the Aboriginal people I have spoken to almost instinctively know, understand and accept what I'm saying."

For the next two days we talked of the four paths of Eckhart. Chartier also taught me how to meditate, not that I did it very well, for to be honest, I was rather sceptical of the whole thing. During the days he let me read his translations into French from German and Latin, of some of Meister Eckhart's sermons and other writing.

I still didn't really understand what all this had to do with me, or how I could apply these philosophies to my life in Ballarat, so I asked him that question on the last evening of my visit.

"I've started you on your paths, and you may either follow them or not. They are not a prescribed way, and if they do not help you, abandon them – but never abandon your faith! On the other hand, you may choose to follow Eckhart's way. After all, it is simply one man's view of spiritual truth and reality, which makes sense to me, but maybe not to you. There may be other paths for you to follow. If you do seek to understand more, knowing Eckhart's philosophy might help you make practical decisions."

"I don't see how it can help me to decide whether I should continue to seek non-violence in response to flagrant corruption, injustice, and political abuse, for example." Yet even as I articulated the question, I had some idea of what his reply was going to be. Perhaps I was beginning to understand. I waited for his answer quietly.

"Unlike myself, you have not made vows which would prevent you from taking up arms. On one hand we have discussed how justice and compassion is an aim of all believers, and how we must all resist cruelty and injustice, wherever and however it is encountered. But remember, there are many causes worth dying for, but very few worth killing for. Does that help?"

I smiled as I replied, "You know, that answer was in the back of my mind, immediately after I spoke the question! Perhaps it is the meditation!"

His eyes twinkled, and then he grew serious. "If you think that way, deal with each issue as it arises, that is all anyone could ask. We are not perfect, and we cannot make perfect decisions, we can only do our best. Learn to seek God's forgiveness when needed, and learn to forgive yourself, then go on to the next problem."

Next morning as I left I thanked him for his patience and understanding. He blessed me, then surprised me.

"Do you remember when we first met, I mentioned that I had been dreaming that someone like you would come to visit me? That was quite true, for I dreamed that a black

man would come to me from Paris, speaking French, to be taught by me like many others who preceded you. Now I must tell you that you are the equal of many other fine brains, and that you should be ashamed about nothing - *rien* - race, creed or colour, whether your parents were married, whether your brother hates you, whether you hate your brother, and wanted to kill him. I will pray for you every day, and God be with you. Goodbye, Jonathan.”

## CHAPTER TWENTY EIGHT

“Am I glad to see you, I’ve been run off my feet ever since you left!” A delighted Eddie welcomed me back to his tent, following my long coach ride home. He was surrounded by cans and containers, from which he painstakingly measured the ingredients of tomorrow’s stock. He paused to wipe the sweat from his forehead, for it was a very warm November day, which augured a good day’s sale of our soft drink tomorrow.

As I got ready to work with him, I hurriedly asked what had happened since I left a week earlier.

“Not much really. The traps have kept up the pressure with their license hunts, and there has been no attempt for them to come to terms with any of the demands of the diggers, perhaps because they are *demands*. Petty officials are the same the world over, and we might have gotten further by *requesting* consideration of our grievances. Now our dealings have become so poisonous between us and them that to request and not demand is considered defeatist.” Eddie sighed, concentrated on adding the last precious contents of a can to the boiling caldron, remembered what he had been talking about, before resuming his story. “You were already a member of the Ballarat Reform League before you left, and on Saturday there’s to be a public meeting at Bakery Hill to formally establish the organisation.”

“Are you going?” I asked.

“I thought I’d see what you thought. As you know I joined because I support most of the ideas of proper representation, and the rights of diggers to vote. More important is the aim of ending these digger and shopkeeper licences, to say nothing of the greater need to totally do away with *all* gold field commissioners such as Rede and Johnstone. But what do you think?”

“I haven’t changed my mind since I left, we all need to support reform, but I still firmly believe that the only way to achieve that is through peaceful means. I still support the idea of the Reform League, because if we are lucky, we can negotiate rather than rebel, so I’m in favour of going to the meeting.” We agreed to go together.

The following morning I called in on Sam and Ray as I made my rounds. It was a warm spring day, and business had been brisk. Just before midday I was glad to take a few minutes rest. McGill was there too.

“What’s up?” The aggressive little soldier asked.

“I just got back from Melbourne last night. No one there seems too concerned about things up here, and there’s not much to report. I thought I’d go to this meeting on Saturday. You guys going?”

McGill answered for everyone, “Sure am. You ready to join my Independent Rangers Brigade yet?”

“I still haven’t given up the hope of resolving these problems by peaceful means, but if and when I change my mind, I’ll join.”

“Then you’ll be joining sooner or later, because there’s Buckley’s chance of the administration changing its mind about the reforms we have demanded. As a citizen of the U.S.A., I would have felt that you’d be proud to fight for the overthrow of a corrupt monarchical system of government.” Sam and Ray nodded their assent.

“One of the problems I have with that is that neither I nor Sam are considered to be citizens of the United States, because of the colour of our skin, and I think you know it. Then again, I prefer any sort of government to one that would enslave me, and put me to work, at no wages, and subject me to physical and mental abuse, than any so-called democracy which would bind me in such a way. Speaking for myself, I would rather be free to sell lemonade in the most abject colony, under the most corrupt and unjust gold commissioner, than to lose what little freedom I may have because I am black. Tell me, is it correct that you are here as an agent of the United States government?” I didn’t even pause for him to respond, but continued. “I have heard that you work for Mr. Tarleton, consul general of that country in Melbourne, or was I incorrectly informed?”

“My, how busy you were in Melbourne!” McGill replied sarcastically. But though flustered by my reply, he was one very cool customer. “I deny both of those allegations, for as you know I work for an American bank.”



“Strange that they have given you such a lot of free time to organise your rifle brigade or whatever you call it. Anyway, I think if I do ever change my mind, I’ll just throw in my lot with the other non-American diggers here. But it’s early days yet. I must be on my way. Lemonade anyone?”

Since no one wanted to buy a drink, I said goodbye and continued on my way. I could see that Sam and Ray had not been pleased with my exchange with McGill. I felt good about it, for there was something about the man, and his arrogant assumption that I would rush to join his militia group that annoyed me. On the other hand, I somehow had to repair the damage to my friendship with Ray and Sam. I decided to go back that afternoon, and try to set things right.

When I returned late that afternoon I found a hostile and resentful Sam ready to confront me.

“What is with you, Jonathan?” He yelled in my face. “If you don’t like our friends, stay away.” Sam stood over me, hands on hips, and face close to mine. He dwarfed me, and because I had known him for a long time, I couldn’t help laughing.

“Sam, I’m just remembering bailing you out, buck-ass naked from a French prison in Tahiti. Have mercy on an old friend.”

For all his anger, he could not prevent himself laughing.

“You’ll be the death of me Jonathan!”

“No, you’re more likely to be the death of me, mate,” I joked. “Seriously, I am very concerned about what is going on here. When I was in Melbourne it was known all over town that there are police spies, and *agent provocateurs* operating up here. There was also a rumour that the American consul is involved in plots to overthrow the government here, and that there is an agent, a man trained at West Point, organising things for them up here. Sound like anyone you know?” Sam was about to speak, but I cut him off.

“There’s also a person I know who heard the American consul say, ‘if anything goes wrong, there are some niggers up there that we can blame for causing trouble. So I am warning you to be very, very careful what you say or do, until these problems are resolved.’”

Sam was clearly amazed by this news. “Do you mean to say that you found all this out in just a week in Melbourne? I don’t believe it.”

“Sam, the only reason that I came back to Ballarat from Melbourne in the first place was to warn you about all this, but I think that you and I had such a bad falling out that you might not have believed me if I had told you then. I didn’t plan to come back to sell lemonade, or because I spent my money, but because I wanted to alert you and Ray to the dangers of revolutions. Just as you would have done for me, for no matter what, we’re brothers.”

My old friend became softer, and I think he was quite moved, so I continued.

“Why I returned this past week was to convert my bank account into cash, actually quite a lot of it. I divided the cash, and put some in an envelope addressed to you, and most of it in one addressed to myself. I asked Pierre to put them in his safe, not to open them, nor to give them to anyone except the person to whom they were addressed. In the event of either of our deaths, he is to keep the contents, otherwise he is to hold them for us. I fear that this whole thing is going to blow up.”

I continued before he could interrupt, “If we lose track of each other, and you need to escape, just take off, there is enough money in your envelope to get you out of here, and back to the States. This week I intend to buy a horse at Hayes’ stable. Should you ever need to run for your life, I’ll leave a note there giving you permission to use the nag. But should I need it before you, I intend to take it. Should you get there first, and need to make a run for it, providing it’s available, take it. Don’t forget though, the same goes for me – so if we get there at the same time, we’ll just have to fight over it!

Meanwhile, let’s watch out for each other, even though we disagree on politics and stuff.”

I didn’t want to sound too serious, so I chuckled before continuing, “Meanwhile, I have to make some more money out of lemonade sales, ’cause I can’t go to the bank to withdraw funds. Keep in touch, right?”

“Sure will. Thanks Jonathan, But I don’t know if I *would* have done the same for you, you haven’t been my favourite person lately!”

“I guessed as much, but when the chips are down, we two stick together, no questions asked, eh?”

When I left I was really glad I had had words with McGill, for the confrontation allowed me to warn Sam and Ray to watch out for themselves.

There were literally thousands of men milling around Bakery Hill that Saturday, as Eddie and I made our way to the meeting, though the crowd was immense and growing, there was almost a festive atmosphere. Most national groups had clustered together around their particular national flag. There was a large American group, and a surprising number of European flags. A smaller contingent of Germans were gathered together under a variety of national colours, while a loud brass band blared German marches punctuated by the rhythms of a massive bass drum. There was of course many others, including some Irish, assembled under a large union jack, but there were more of their countrymen assembled under the stars and stripes.

As a non-citizen I avoided the Americans, and made my way with Eddie to the Germans, where no one seemed to care about including or excluding anyone. The band made communication difficult so we simply waited to see what would happen next.

There were many points of view expressed that day. Humffray spoke for the protagonists of moral 'suasion, and became President of the Reform League. I hoped that they would be able to suggest an agenda which would be adopted by the meeting, for I supported them. Vern was on the platform, exactly as Eddie had described him, openly supporting revolution and the establishment of a republic. Other opinions ranged between the extremes of Humffray and Vern. One of the speakers, I cannot recall whom, summed up the consensus thus, “We do not wish the League to bring about an immediate separation of this colony from the parent company, if equal laws and equal rights are dealt out to the entire free community.” That seemed good to me, for I desired no dictatorial American-style republic, which under the guise of democracy enslaved a whole people.

What everyone agreed was that the licence hunts – indeed the licencing of diggers and storekeepers – should end, and that everyone should be enfranchised, and be properly

represented in government. There were many other political aims regarding who could qualify for Parliament, as well as short parliamentary sessions, with more frequent elections. The meeting demanded the immediate release of the three men arrested for burning the Eureka Hotel, and also stipulated the ultimatum that the most blatantly corrupt trap, Milne, be dismissed.

Nobody seemed to be listening to us. The month wore on, and the authorities refused to even consider our reforms. But it wasn't all bad news. On the 18<sup>th</sup> November, 1854, James Bentley and two accomplices were convicted of the manslaughter of Scobie, and were sentenced for three short years for a crime for which everyone agreed they should have hanged. We all felt that any decent digger would certainly have been executed. To rub salt into our wounds, two days after such light sentences had been handed down to cronies of the government, the three diggers accused falsely of burning down Bentley's Eureka Hotel were found guilty, and received sentences ranging from six months to three months. This for a crime that literally thousands of diggers participated in. So things were bad and getting worse.

Each government injustice was answered by yet another public meeting, followed by the government taking an even harder and intransigent line. These tactics gradually eroded Humffray's position of non-violence, and I found it increasingly difficult to justify non-violence, even to myself. Eddie took the first steps toward changing his position to a more militant stance, though I think he too would have difficulty picking up a rifle and firing it at another human being, just as I would.

Meanwhile we made our lemonade each evening, and sold the drinks every day. We continued our philosophical discussions each evening over a game of chess, and our friendship deepened. During the last two weeks of November I was in almost daily contact with Sam and Ray, and though I ran into McGill several times we at their place, we maintained a cool but cordial friendship. One Wednesday morning I was sitting discussing the news of an attack by some diggers on an armed convoy of troops and artillery being brought in by the government to support the administrators holed up in the Camp. Sam

was commenting when in mid-sentence he was interrupted by a very excited McGill. He did not seem to notice me, or if he did he ignored me.

“Did you hear about last night?”

Then, without pausing for a reply, he recounted a special dinner held in honour of Tarleton, who was then visiting Ballarat.

“I was at the dinner for Tarleton, who, by the way, is cautioning all Americans not to get involved in any rebellions. Like we would listen to him, now that our blood’s up! Anyway, he gave a speech praising Governor Hotham for his good administration if you can believe it. Rede and Johnstone were there, smiling like cats who had swallowed the cream, and looked exceedingly smug about the whole thing, for they knew that the sixty or so of us that lived here were in full support of the diggers. Anyhow, just before the time for toasting the various governments came, Tarleton, Rede, and Johnstone were all called out of the dinner – probably because someone had attacked and routed a British army column coming up here to reinforce Rede.

When Dr. Otway, who was chairing the dinner, called for a loyal toast to the Queen, there was no government official to respond to it. There were a few English businessmen there, but not one of them would stand up to propose the toast. There was a long silence, and the longer it went on, the British seemed increasingly embarrassed, while the rest of us looked at each other with delight. Then, one of the English guys stood up, and I carefully remembered every word he said. He started by saying ‘I and my fellow colonists claim to be and are thoroughly loyal to our Sovereign Lady Queen Victoria, but we do not and will not respect her man-servants, her maid-servants.’ Here the guy paused for effect before continuing. Then, gesturing to the empty seats of Rede and Johnstone, he concluded ‘her oxen or her *asses*.’

The day when British businessmen offer that kind of insult to their own government must surely mean that the government can no longer call on the loyalty of the people. We’re in for a revolution!” He cackled triumphantly, as he rubbed his hands together in anticipation.

## CHAPTER TWENTY NINE

As I made my rounds later that day, it seemed as though McGill might be right, for the Eureka lead was buzzing with excitement, since the armed column had been taken by surprise, and put to flight by resolute diggers on the lookout for such a force. But many agreed with me that we could not expect this administration to give in to such a blatant attack by the diggers.

All over the diggings were posters headed

### **DOWN WITH THE LICENCE FEE, DOWN WITH DESPOTISM, WHO SO BASE AS BE A SLAVE?**

I was amused and smiled wryly at the last sentence. Nothing could be as bad as being a slave, and unsavoury as things were here, there was no comparison. But few of my fellow diggers had actually experienced slavery, so it wasn't worth wasting my breath on explaining reality to them. I just kept my own counsel. These posters called a meeting for early afternoon, again on Bakery Hill, so I made my way back to Eddie's tent, and as he was waiting for me, we went to the meeting together.

When we arrived we were amazed that there were many more diggers than at previous meetings. The sheer size of the mass was quite alarming. There were many men already on a large platform, including Father Smyth as well as his predecessor. Above the platform stood an enormous tree trunk, which must have been nearly eighty feet above us. Flying from the platform was an impressive flag, sans Union Jack, but representing the Southern Cross constellation, with a cross adorned by stars in the centre and at every point of the cross. I asked myself if this was to be one of the opening meetings of a Republic of Australia, and shuddered to think of the violence which might be required to establish it.

"There's going to be trouble," I muttered to my partner, and he grunted in agreement. The mood of the crowd became really ugly when the delegation sent by the Reform League, George Black, Tom Kennedy, and the pacifist Humffray reported that the Governor had refused their demand that the diggers unjustly imprisoned for the burning of

Bentley's hotel be released. The tone of the meeting became even more violent when it was revealed that Humffray, already unpopular for his pacifist views, had a private meeting with Governor Hotham just before the other members of the delegation joined them. Immediately shouts of "trimmer", meaning a phony, was taken up by large sections of the ten thousand or more diggers taking in every word of the report. Then it was revealed that the meeting between Humffray and Hotham had not been authorised by the Reform League, and a large section of the assembled men moved to physically attack Humffray. It was only his quick wit and fast talking which saved the pacifist from injury. Some of Hayes' colleagues on the platform spirited the now unpopular reformer away, and the meeting continued in its rebellious vein.

The crowd quickly moved to adopt even more serious propositions, now that their fury had subsided. Hayes proposed the motion that, "the common practice of bodies of military marching into a peaceable district with fixed bayonets, and also any force, police or otherwise, firing on the people, under any circumstances, without the previous reading of the Riot Act, and if government officials continue to act thus unconstitutionally, we cannot be responsible for similar or worse deeds from the people."

Not even I could argue with that, and I found myself shouting support as I voted in favour of the motion.

Lalor then proposed a meeting for the establishment of a central committee, to take place at the Adelphi Theatre the following Sunday. This proposal was carried unanimously.

Then the man whom Eddie considered to be dangerously deranged, Vern, moved: "That this meeting, being convinced that the obnoxious licence fee is an imposition and an unjustifiable tax on free labour, pledges itself to take immediate steps to abolish the same, by at once burning all their licences. That in the event of anyone being arrested for having no licences, the united people will, under all circumstances defend and protect them." On the face of it I couldn't argue with this, so I glanced at Eddie to try to gauge his response knowing how much he loathed Vern. We exchanged glances, and though we could not have made ourselves heard above the cheering voices of the crowd, we both shrugged, to indicate our assent.

Smyth's predecessor, Father Downing, then try to calm things down by suggesting that the diggers send yet another deputation to the officials to present their demands. At first this was mocked, with many believing as I did that the recent past had proved how useless such representations were. But as a sign of respect to the well-meaning priest, Smyth, Kennedy and Black were dispatched to the Camp.

At this point great bonfires were lit, and most of us holding licences went forward and threw them into the flames. Then it was announced that we would only protect those who became paid up members of the Reform League before 15 December, so memberships were sold then and there to those wishing to join. The meeting broke up in better humour than it had started, and amid firearms being shot into the air, and general horseplay, Eddie and I made our way back to his tent.

"I don't think that there'll be much work done around here tomorrow, so there isn't much point in making any lemonade tonight." Eddie followed up this suggestion by offering to share a meal at A'loo's. I agreed, and as we walked I became aware that Eddie was concerned about something, so we walked over to the crowded café in silence. During the walk I thought about the meeting. Was I in the right not wanting to get involved in this conflict with the authorities? I knew that after my last confrontation with Allan in San Francisco, and my hurried flight to Australia, all I wanted was a peaceful life, to do what I wanted to do. But I also knew that I sided with the miners against such biased and corrupt government.

We sat down in the crowded café, and as we shared a jug of watered down beer, we started to discuss our feelings about the political situation on the goldfields. He felt much the same as I did. "I'm thinking of becoming more committed to the Reform Society, and beginning to change my mind about armed resistance to Commissioner Rede and his troops," my business partner mused. "Yet when I left Prussia I promised myself that I would not take up arms for any reason at all. Now I don't know what to do."

I interrupted him, "I have been thinking the same, but after that court case in San Francisco, and its disastrous effect on my life, I promised myself that I would never become involved in any *cause* again, in any circumstance. Legal or illegal. But like you I



have the feeling that things are getting so overheated here that soon I'll have to choose, but I don't think I could join the militia units being set up by men like McGill, because I don't believe in killing unless in self-defence."

We picked through the plates of Chinese food brought by the waiter, then Eddie had an idea. "Father Smyth should be back from paying his visit to Rede, why don't we go ask him what he thinks?"

I agreed, so we finished our meal, then set off to see the priest. I had never seen Smyth so depressed. He had just returned from the Camp, and from his depressed mood, we guessed that the meeting between the delegation and Commissioner Rede had not gone well. The priest confirmed our fears, after welcoming us.

"The delegation was stopped by armed guards before we even got to the Camp. We were clearly unarmed, and I explained our mission to the guard, who at first simply tried to turn us away. I insisted that our meeting with the Commissioner might bring about peace between the diggers and the authorities, but the guards would not listen to us. Then an officer passed nearby, and I had the sergeant of the guard call him over. At first he sided with the sergeant, but after I complained that I was a priest, the officer said that only I would be permitted to enter the Camp to speak to Rede, insisting that the others await my return under armed guard.

"We simply had to accept this insulting behaviour, in order to complete our mission. Rede was unhappy that my visit had interrupted his drinking in the mess, and he did not even ask me to sit. After I explained the diggers' demands in the most polite terms I could, he arrogantly lectured me about 'everyone has to obey the laws, including me'. I pointed out that there were also the questions of the interpretation of the laws, as well as discretion on law enforcement. He simply refused to listen to me, refused to grant any of demands, and informed me that he intended to go on enforcing the laws as in the past, whether the 'rabble' liked it or not. He was under instruction from the Governor, and would continue to enforce the law until instructed by his superior officer to cease doing so. With that, he simply walked out of his office, slamming the door in my face."

Eddie and I tried to calm the priest, but he became quite distraught. "I warned him that he was in danger of causing unnecessary bloodshed, and that the diggers were in no mood to continue taking this type of abuse, but he simply would not listen. So I left and joined my companions, and even as we left the guards jeered at us in a very insulting way. Civilised people should not have to put up with such behaviour!"

"We came to see you for some advice, but as you are clearly upset, would you like us to come back in the morning?" I asked on behalf of Eddie and myself.

"No, it will take my mind off of the situation."

"Well, it probably won't, because we are both thinking of changing our minds about becoming involved in what may turn out to be an armed struggle for diggers' rights. We attended today's meeting, and while we have grave reservations about taking up arms, there seems to be no alternative. Can you advise us as a priest?"

"Believe me, I understand your anger and frustration, and were I not a man of the cloth, I should be in the same quandary! I can only ask you to wait, for I believe that change will come eventually. Yet I know that neither of you would take up arms if it could be at all avoided. I can only really advise you to follow your consciences, as good honorable men. I realise that in this sense my path is easier, for I am bound by my vows. If you do join one of the more aggressive factions, be *very, very* careful, for I believe that there could be bloodshed sooner than any of us may think."

There wasn't much more we could say, but as we made our way back to our tents, Eddie and I agreed to see what the next day or so brought. We were both so depressed that neither of us really wanted to play chess, but we did so to take our minds off the future. We played in silence.

But he still beat me.

We didn't have to wait long for Father Smyth's prophesy to be fulfilled. The very next day, Rede sent out a large party of police and soldiers for another licence hunt. As they made their way into the Gravel Pits diggings, the shout of "Joe, Joe" was taken up by the diggers. They felt particularly insulted by the fact that their demands had been

flagrantly dismissed, and that the party was led by one of the most hated of Rede's assistants, Johnston, the despised torturer of Johann Gregorious. This time the authorities were in for a surprise, for the diggers did not run to evade arrest, but stood massed around the diggings hurling abuse backed up by stones and chunks of quartz. Soon word got around the Eureka areas, and men in their thousands quickly made their way to the Gravel Pits.

When Eddie and I arrived the fight was not going well for Johnstone and his men. Rede appeared and read the riot act, but his words were drowned out by abuse as missiles of every description – anything that came to hand – were hurled at him. I even hurled a few stones myself. The troops made a half-hearted sweep through the Gravel Pits, but on this occasion I saw no digger run, nor was any hunted down in the usual way. Indeed, the miners were so clearly out for revenge and stood their ground so resolutely that the raiding party quickly retreated to the safety of the Camp. I asked myself how long the diggers would refrain from overrunning the Camp and reducing it to ashes, as they had so devastatingly done to Bentley's Eureka Hotel.

It was as though a magnet drew as all, thousands of us, to Bakery Hill simply in order to make order out of this chaos, to organise and make plans to defend ourselves against this government determined to crush us into submission. Like so many others, I found myself fuming. Had I owned a rifle I should have gone and retrieved it from my tent, like most of the others. This time the meeting was more intent on organised resistance.

It was not necessary to make verbal threats, because there seemed to be an unspoken assumption that if any attempt was made by Rede and his troops to disperse the ever increasing crowd of angry diggers at Bakery Hill, those having firearms would use them to defend us all. No more were we willing to defend ourselves by words alone, for although the shout of "Joe" will always echo through my memory, it was no real defence. Guns and pikes were. As I stood among the heaving crowd of angry men, it occurred to me that Sam had been right and I had been wrong, but then I remembered the scene outside the court in San Francisco, and I feared the consequences of this opposition to governments and

Gold Commissioners. Experience had taught me that it was wise to keep one's head down.

Was I acting out of cowardice or wisdom? I questioned whether I had become so interested in finding out more about my spirituality only because I no longer wanted to pay the personal price of freedom. One problem was that I was now inclined to act out of anger, and was now leaning toward taking up arms, but for what? If this group of men defeated the government, corrupt and unjust as it was, would they be able to bring about justice for all, or would they fall into the errors of tyranny? I can tell you I was very confused.

Eddie and I saw Sam and some of his American mates in the crowd, and we jostled our way over to them. I nudged my gigantic friend, and though he looked a bit surprised to see me there, his face turned into a huge welcoming grin – no questions asked. Even if he had wanted to, the din made by the angry diggers would have drowned them out.

Timothy Hayes made his way to the rude platform, and after several minutes and countless attempts, made his voice heard above the commotion. "We," he gestured to his mates Lalor, Vern, Ross and Carboni standing around below him, "suggest that we form up in companies, and march behind the Southern Cross to the Eureka diggings. Once there, we will make our plans to defend the digger community."

Eddie left to join the German contingent, while I was pleased to march beside my American compatriots under the blue and white flag, lowered from the tall tree trunk and taken to the head of that vast column of angry diggers.

## CHAPTER THIRTY

Rebellions and revolutions are difficult to plan, carry out, coordinate and manage. I had been unaware of any such activities, but when we arrived at Eureka, things sorted themselves out surprisingly quickly.

First, we had to construct some barrier behind which we could defend ourselves, to train, and use as a headquarters against the authorities. This stronghold had to be constructed, and Sam and I, as well as many others, used our own shovels and other digging tools to build the rough wood and earth walls of our bastion. After awhile we paused for breath, and my old friend and I had a chance to fully make our peace, as well as to explain ourselves.

Sam said that he had been surprised to see me at Bakery Hill, and that he felt good that we were facing our enemies side by side once again.

"I am glad too. I didn't expect myself to join the throng," I joked, then grew serious. "But I don't think that I could use a gun on another human being. I'll sort that out later. Part of my being here is that I didn't want you to think me a coward, and in any event I believe that we should protect and defend each other – all of us – the whole community. I was at the digger hunt this morning, and was so angry that I joined in the stone throwing, which on reflection could have killed someone. I just don't know anymore!"

By this time we had caught our breath, and continued to shovel dirt around the makeshift walls of the stockade. When next we tired, we continued our conversation.

"Well, I know what I'm going to do, if we are attacked by that group of so-called officials, I intend to take a gun or a knife or a stone or a pike and take as many of them down with me as I can. I'll never stop fighting for my rights. Whatever you decide to do is OK by me, because I've missed you, and it's good to have you back."

"Things aren't so clear cut for me. As a wise man recently advised me there is a great deal of difference between dying for a cause, and killing for one. I still have to figure that out, but I am really glad to be back too, and to work beside Ray and you. When we

have finished with this thing..." I was interrupted by the supervising engineer ordering our group to another section of the barricade to help out there. I wondered where Eddie and his German mates had gotten to.

For the next few hours three quarters of the old team laboured side by side. In the early hours of the afternoon, the foundations of a small fortress were well under way. We stopped, and were all surprised to see that there were large fires over which meat sizzled on hotplates, and mounds of bread awaited the famished men.

Just after I had taken a huge bite out of bread wrapped around mincemeat of some kind, Eddie sidled up and put a hand on my shoulder. I made a space for him beside me, and we each took a few bites of our meal in silence. He seemed a little abashed, so I waited for him to start the conversation.

"I don't want to upset you, but I have not been entirely honest with you. In the last couple of weeks or so, I have been involved with the central planning committee concerned with organising for this all out attack upon the digger community. I would have told you this, but I knew that you were a pacifist, as was I. I did not want to complicate things for you, and I must tell you that my comments and advice have been truthful, and that I continue to share your feeling, but I am sorry for not having told you everything."

I was very shocked to hear this, and to be honest, I found myself with hurt feelings about his deception. But men do not discuss their hurt feelings – to do so would be like crying. So I laughed, "Mate, in a place like this, it is wise never to take people at face value! But what does this mean for either of us?"

"Well, like you I cannot take up firearms against my fellow men, it's too easy to shoot into a crowd and kill innocent people. But I can justify taking up a pike for self-protection, so I've been given command of a pike brigade to make up a last line of defence of this stockade. It might surprise you that I have been made a member of the central committee organising and planning our campaign. In fact, I've just come from a meeting of twelve of us. We have elected Peter Lalor as our Commander, and not that idiot Vern.

Lalor has asked me to organise and coordinate the supply of arms, food, ammunition, and I'm here to ask you to help me do that."

"Our lemonade selling days should help us there." My prayers offered on the way from the Gravel Pits to Bakery Hill a few hours ago were being answered. I no longer accused myself of cowardice or hypocrisy.

We expected to be attacked at any time, but as the afternoon wore on, orders came round for all divisions to march back to Bakery Hill, while another small group of armed men would guard the stockade. Having decided to get together with Eddie after the meeting, to organise supplies for the coming days, he left to join the German division, and I joined Ray, Sam and their mates as we marched back under the Southern Cross flag once more. As we marched along joking and laughing among ourselves, I had a chance to think about where I now stood in relation to my earlier self recrimination, and my present action.

I discerned more clearly who and what I was. Son of a rich plantation owner I was a black man brought up in a white household who, despite the colour of his skin somehow believed himself to be the legitimate heir to a white father's American fortune. That fantasy I was able to lay to rest. However, my father had made it clear that all his French property was to be left to me. Being and working alongside Sam I recognised my need to be with my own people. The court case in San Francisco led to consequences which I had not foreseen. What followed, our retreat from my homeland had brought me good fortune and financial independence. I was living in a country which, by or large, didn't care about the colour of my skin, and certainly did not wish to enslave me. So why was I here, marching off to war in this column?

I was here because I had made a decision to watch out for Sam, and to do all I could to protect his back, should he need it. In the course of doing that I had begun to discover what my beliefs about life and death, violence and non-violence were. As I looked back on my days in New Orleans I could see how far I had come. I began to see that I had changed, that was all. What I finally would change into would probably involve a life's work. I realised that I no longer felt guilty or confused.

I was not even disconcerted by the chaos that was unfolding at Bakery Hill. We arrived and found thousands of diggers milling around, looking for their particular division, or to the group to which they thought they belonged. Considering the size of the crowd, it didn't take us long to sort ourselves out, and before long Lalor stood on a large tree stump, and called for silence. This imposing man stood before us holding a shotgun, rigid as a soldier on sentry duty. He held the gun in his left hand, and his gesture for silence with his right hand was immediately obeyed.

"I now have to perform my duty of swearing you all in, and to join you in our solemn oath to be faithful to the Southern Cross." At this point he gestured to the large white cross, emblazoned with white stars on a dark blue background which floated far above us all fixed to its mighty flagpole. He was deadly serious, and was clearly our leader, and acted like it.

"I now order everyone who does not wish to take the oath to leave this meeting at once. All divisions under arms will now fall in, in proper order, around the flagstaff." As we all followed his order, I wondered if there were any government spies present, and if they would leave before they too became traitors in the eyes of the law.

Lalor had left his tree stump, and I was surprised to see him kneel at the foot of the towering flagstaff. No one, other than my father, had ever asked for or wanted my allegiance before in my entire life, so like many others, I kneeled also. As I did so I considered the irony of my situation, as a non-citizen in the land of my birth, would this oath grant me citizenship in another country? What would the name of that country be? Victoria? Australia? Southern Cross? Here was such a defining moment in my life I couldn't bring myself to close my eyes, but just gazed at the kneeling figure of our leader. Would he mention God, I wondered, if so, which one?

By this time Lalor had settled himself, and having uncovered his head, he suddenly raised his right arm straight above his head and pointed to the flag.

**"WE SWEAR BY THE SOUTHERN CROSS TO STAND TRULY BY EACH OTHER, AND FIGHT TO DEFEND OUR RIGHTS AND LIBERTIES."**



The assembled divisions repeated this oath as we too pointed to the Southern Cross. I, like many others, was moved to tears by this spontaneous declaration. I admired the man his courage and wit in making not a declaration of independence, but an affirmation of brotherhood. I was struck then that I could only see men, and I wished that Mary-ellen had been by my side as comrade, if not lover, to share such a stirring event. Yet as I looked around me at the men of every shape, colour, age and religion I could not discern a single woman. Yet it was rumored that the very flag to which we had sworn allegiance had been designed and manufactured by the wife of Timothy Hayes, and other female relatives of the diggers. I wondered why they were not present.

My thoughts were broken by shouts to move back to the stockade, and I joined Ray and Sam, who were now going back to train with McGill's revolver brigade.

"What happens next?" I mused aloud as we trudged back along the dusty road.

"I guess we just wait and see what Rede does now. We've been told that we will be training with some shotguns and rifles this afternoon." Sam looked sidelong at me, and asked "What about you?"

"I'm not going to carry a gun, but I think I might join one of the brigades with pikes, that's about as far in defence as I am prepared to go. I think Eddie might need some help in organising supplies, and cooking – that's going to be a gigantic task for so many men. I guess you're right Sam, we have to wait and see – I can't see us attacking the Camp."

Once back at the stockade we went our separate ways, as I thought Eddie was pleased to have my help as a cook. Many of the merchants were ready to supply basic foodstuff, and for hours it seemed that I was involved in preparing the flour and water for damper, and mixing batches of it in any container, large or small, which we could find. Then the mutton, crawling with flies in the summer sun, had to be cut up for frying, or boiling, and great urns of tea were constantly on the boil over countless open fires.

The stockade itself was about two or three hundred yards long, by about half that distance wide. Tents were everywhere, with fires interspersed among them. As I moved from fire to fire, working with a few others prepared to do such a menial task as cooking, it

seemed to me that there was a great danger of the tents catching fire. There was a small area in which men drilled with their various firearms. As I crossed this space I caught sight of Sam and Ray with rifles. Sam noticed me, and performed an exaggerated present arms for my approval, which I acknowledged with a wave.

For the next two days all I did was prepare and cook any available food. On Saturday night I was given a pike by Eddie, who instructed me that if we were attacked I should grab it and assemble with the others as a last line of defence. I was not in a good mood, for during the afternoon about four hundred or so diggers from Creswick had arrived at the stockade, and there was not enough food to go around. They decided to go to some of the close-by restaurants and grog shops, and I couldn't help wondering what use four hundred drunken diggers might be in case of attack – if they ever came back.

So when Eddie brought me the pike I lost my temper. “What the hell use is a pike, when we should have had food and drink for our reinforcements” I raged.

“I can only do my best...”

“And that's not good enough.” I snapped back.

“Well, here's a dish of damper and meat I picked up on my way here, let's have a few minutes rest, before getting ready for guard duty. I'm exhausted.”

I took the food because I was hungry, but we ate in silence, though my German friend tried to make light of our position. Eddie took our empty dishes as he made off to organise the guard, and I soon fell asleep.

It seemed like just a few minutes later that I woke to the sound of rifle fire, shouting, the smell of gunpowder and the chaos of a dawn attack on the stockade.

Groggy as I was from sleep, I somehow remembered my pike, and rushed out of the tent.

It was very difficult to see in the early morning dusk, but I looked around bleary eyed, and saw some of the rifle company firing from behind the wooden walls. Bullets seemed to be flying everywhere, and I crouched, as I tried to make my way somewhere to

help. Before I could plan my next move, they were already swarming over our pitiful walls, some on foot and others on horseback.

At that moment I saw Eddie standing alone at the foot of the flagpole, cutting and thrusting with a ridiculous large cutlass which he had obtained from somewhere, fighting hand to hand against the swords of two troopers. As I tried to make my way towards him to fight at his side, I could hear him shouting something in German, which I could not understand. His intention was clear though, for he was single-handedly defending our battle flag, the Southern Cross, against all comers. Whenever I recall the scene, waking and dreaming, it is in slow motion. Try as I might I was unable to reach him to assist him before a host of other troopers joined the group attacking my friend and business partner. Then I saw him struck down, by a single thrust of a sword, before being cut to pieces many times by the angry mob of troopers, who stood over him mutilating his lifeless form even after it was clear that he was dead. I threw my pike away, and pushed my way to him through the still flailing swords.

I knelt at his side, and cradled his butchered and now lifeless body in my arms. As I did so I couldn't help remembering my churlish behaviour of the previous evening. I was crying like a child, and I brushed away my tears with hands stained by the blood of my mate. As I did this I noticed that my tears and his blood had mingled.

Then one of the troopers, who was barely able to restrain his comrade from hacking me to death too, arrested me.

## PART FOUR

### CHAPTER THIRTY ONE

Confused, tears still coursing down my cheeks, and with the blood of Eddie staining my clothes, I abruptly realised that the soldiers who had arrested me had already handcuffed and hobbled me, and left me in search of braver victims than I.

In a dream I stumbled across a nearby log and watched the carnage take place around me, in a kind of shocked daze. A few things remain in my memory.

Horseback soldiers riding among groups of men who threw down their arms and surrendered. A few avenging officers riding with lighted torches in their hands setting fire to the few remaining tents in the stockade, and the terrible screams and cries of trapped men, as they burned to death in the flames. As I watched these dreadful scenes, something seemed to snap inside my brain, and it felt like I was detached from my body, seeing these events unfold like a nameless narrator of a fictional horror story. At that point it was as though something had snapped inside me, and I knew that I would never be the same person again.

Sometimes, even when I breathe the purest air, the smells of those resulting fires, combined with the sweetish, nauseating stink of burning human flesh, assault my sense of smell. I looked around, as my disorientation gradually slipped from me, to see if I could spot Sam or Ray, or anyone I knew. None of them could be seen, so I assumed that they had also died as Eddie had died, defending their mates.

I saw Carboni, assisting one of the doctors treating the wounded on both sides, and was surprised to witness his arrest by a tall, thin cadaverous man, who seemed strangely familiar, but whom I did not personally know. He took out a service revolver, and pointing it to the Italian's head, escorted him over to our growing group of scapegoats.

Again, I felt that indefinable something snapping inside me. Just as I had once snapped sticks in the yard: snap, snap, snap. Only this time I felt that my personality, or my soul, was slowly, inexorably, being cracked apart.

Although I slowly began to come to myself, my old self did not feel right. Now I seemed to act and react more as an automaton than a human being. I felt somehow separated from my body, as though I could contemplate my circumstances from some distance above my physical body.

Then I began to feel that I had had no right to survive. Why hadn't I wakened sooner, and been at the side of Eddie as he faced rifles and swords with the cutlass which he had somehow acquired? Why hadn't I had the decency to welcome him the night before, and treat him with friendship and compassion when he had shared his last meal with me? What right had I to judge his efficiency of providing supplies, when the poor man had been doing his best, at so short notice? Despite my harping, all I could do was fall asleep, when I should probably have been on guard.

He should have lived. I should have died.

## CHAPTER THIRTY TWO

Soon they had finished and I found myself one of over 100 men, made to stand and march through the town to the hated Camp.

Roped together like animals, we stumbled along, each of us trying to keep up with the guards, for those who did not or could not found themselves on the receiving end of rifle butts or fists. Unconsciously, I tried to blend in, to be anonymous. Soon my guilty, gloomy thoughts overwhelmed me once more. What of Sam, the very man I had come to save, and help to avoid the thing which I most feared would happen to him – the fate that I now suffered? If only I had tried harder to dissuade him from staying here under the influence of big talkers like McGill and braggarts like Vern. I bet they had got away. Nor could I see the tall, thin figure of Lalor among us, and I hoped that our leader had somehow evaded capture, because I personally liked and respected him. None of the other leaders, apart from Carboni, seemed to be among us, and I wondered how they had escaped.

When we reached the Camp we were herded into a courtyard, then taken individually for questioning. When my turn came I was hauled before three men, the main interrogator, an assistant, and a clerk who kept notes in a large book. I was made to turn out my pockets, and they took about seven pounds in cash, my miner's licence, and the receipt for the horse I had purchased should we need to escape. I wondered if Sam was even now riding him to Melbourne, if he had been luckier than I in escaping the dawn attack. Once searched, everything from money to our personal documents were taken from us, and carelessly recorded. Next they took our boots, and any clothing or other possessions which took their fancy, these items were also listed in the clerk's notebook, before being haphazardly piled in the corner of the room.

When I was finally processed, they thrust a form for me to sign, but just before I picked up the pen to do as instructed, I remembered Sam cautioning me on the day that we had first met on the ship to Panama. "Play dumb, admit nothing, don't try to prove how clever you are." I muttered something unintelligible to the official, shaking my head and

rolling my eyes. He held the pen in front of me, instructing me to make a cross, which I did. The two officers witnessed the cross, and without telling me what I was charged with, kicked me out of the office, while the clerk yelled "Next".

Eventually we were all jammed into a couple of stinking cells, to stand sit or lie where we could. No one said much, everyone else seemed as dazed as I. No place for light conversation, or even complaint here. But I'm sure for each of them, as much as me, the long, dark night of the soul had begun.

The events of that first day in prison experienced as they were through my own self-doubt, guilt, and inner turmoil are still difficult to remember in great detail, so it could have been an hour, or even two or three hours before those cells were filled with men. Then, one by one, we were taken out for questioning. When my turn came, I decided that I should continue to present the ignorant, but affable, illiterate. Smiling what I hoped was an idiotic grimace, I tried to form barely understandable, grunting, hesitant replies to the barrage of questions put to me by two men, who did not identify themselves, but whom I suspected were either police or army officers. Assembled around the walls of the room were about a dozen men, one of whom was the familiar yet unknown man who had arrested Carboni. I could still not recall ever speaking to him, yet the light of recognition seemed mutual, and as one of the officers cleared his throat for silence before formally interrogating me, I noted the man talking animatedly to his neighbours. Was he discussing me? At that stage I really didn't care, for I concentrated on the barrage of questions that were put to me.

I answered their basic queries such as identification readily enough, though shortening my name to "John Joseph". My story, I decided, was to tell as much truth as I could, but to simplify the process with much head scratching, grinning, and head hanging to give myself time to consider the implications of my answers.

"Where do you live?"

"Eureka, Sir."

"And before that?"

"Melbourne, Sir."

“No, before that, you fool?”

I wasn't about to tell them anywhere where there was slavery, and where they might be able to check, so I quickly thought of Boston, and thus was my reply.

The other officer asked me, “Exactly where?”

So I answered helpfully, “Well, New York too, Sir.”

“Occupation?”

“Well, Sir, I have to make money somehow, so I do some digging, but don't make much at that.” Here I paused for a long time, but just before another question was put to me I continued, “So I make lemonade powder, and sell it to the other diggers to keep me going.”

“Why were you in the stockade?”

“I was sleeping in my tent, Sir.”

“Where?”

Before answering, I scratched my head in consternation then muttered, “In *my* tent.” Before peering at the inquisitor as if trying to discern if I had replied appropriately.

“But you knew that your friends were getting ready to fight us.”

“No, Sir. I went right on making lemonade and trying to dig for gold. But I couldn't do that in the night, so I went to sleep in my tent.”

My questioners were becoming irritated with me, but persisted for a while longer.

“Then why did you fire at our soldiers when they attacked the stockade?” At this point I saw the familiar man and some of those around him nodding in agreement to the question.

“No Sir, not me. I don't have any guns.” Here I shrugged, and started to pull out my pockets, as though to prove I was unarmed, attempting to demonstrate my confusion by forgetting that they had already searched me. Then I went back to their previous question, “I was only selling lemonade.” Amid general laughter, I was given time to think out what their next question was likely to be, and when it came I uttered a silent prayer of thanks.



“Then why did you attempt to fight for the flag, when we attempted to pull it down?”

“I thought that the flag was real pretty, didn’t you?”

“No. But answer the question!”

A number of the audience were clearly amused at my stupidity, but the familiar stranger glowered, as did a few of those around him. So I knew I was in for some more tough questions.

“Well, what was the question again, Sir?”

“Dammit, man, why did you fight for the flag, at the bottom of the flagpole?”

“Not me, Sir. There was a man I knew fighting alone with some soldiers near the flagpole, so, like, when I saw the soldiers keep hitting him with their swords, and cutting him about while he lay defenceless on the ground, I pushed my way through them to try to help a mate. But, I couldn’t, Sir. He was already dead.”

Here unbidden tears flooded my eyes, and I genuinely hung my head, while angrily wiping tears away with the cuff of my shirt. To their credit many of the other men in the room hung their heads too. Then, suddenly, it was over.

“Guard, take him back to the cells!”

When the door clanged behind me, I quietly sought a place to sit down, and some of the men shifted to make room for me on the dirty floor. A few started to ask me about my questioning, but I shook my head, and they soon desisted. I could stop my fellow prisoners questioning me, but I couldn’t shut up the voice within my head, that self-accusative voice that asked questions I did not even want to think about. Like why had I become involved in that ludicrous venture, which I had always opposed. Why hadn’t I just let Sam do what he wanted, while I stayed in Melbourne; or why had I kept going to the meetings, when I sensed that they would lead to disaster? I came to see myself a weak fool, worthy of Allan’s hatred and disdain.

For the next few days we continued to be taken out, one by one, and the number of men coming back to the cells dwindled to far fewer diggers on remand. What had been a

crowded cell eventually became more spacious, and we all had space to lie down. They did not feed us for a day or so, then began to come around with a glutinous slop that they wishfully referred to as “porridge” – which we forced down our hungry throats. The water was foul, not fit even for horses, but again, there was not much of it, so we drank whatever we were given, whenever it became available.

I would have given anything for a cool glass of lemonade.

Within about two weeks there were only a dozen or so of us who remained on remand: Timothy Hayes and Raffaello Carboni I came to know pretty well, but my depression deepened with each day I remained in jail, without any idea of what the charges were against us. What made me even more irritable was the fact that the gaunt yet familiar policeman or guard paid special interest to me. He never directly approached me, or spoke to me, but almost daily he and a group of his cronies, about six altogether, would congregate outside my cell, watching and arguing about me.

Thinking that my depression might have distorted my perceptions, I confided my concern about these daily events to Hayes and Carboni, and asked them both to observe these visits in order to corroborate my suspicions. After a few more days both of my friends confirmed that the group seemed to single me out for their observation. While I deliberately set out to seem unaware, if not unworried about this unusual interest, Hayes and Carboni would try to overhear what was discussed about me, while at the same time also seeking to be unaware of the guards’ fascination. Hayes came over to me one day, while I lay on my cot trying not to feel sorry for myself.

“I heard a bit of what they were talking about today. The tall thin one is trying to convince his mates that ‘you are the one’ though I didn’t catch anymore of what he said. But one of the others said something like ‘no, the one you think he is, is a much bigger man – taller and broader. I don’t think he was the one at all’.”

“I can’t remember where I saw that tall thin one”, I mused to my friend. “Can you recall him from anywhere?”

Hayes thought for a few minutes trying to recollect. “No, I can’t place him at all. Yet he was in on my interrogation and arraignment, and seemed to know a lot about me too. I wonder if Raffaello knows him?”

Realising that we were likely to be under observation in our cell, we separated, then awhile later I went over to the fiery little Italian, and asked him if he had ever seen the man before. But he could not say.

I had no idea what was going on, but the more I thought about things that night as I lay awake on my cot, I decided to take the risk of confiding further in my two friends. The following morning, after slopping out our cells, we were allowed some exercise in the Camp yard. Again the gaunt man watched, but I walked around talking to Hayes.

“You know I am letting them think that I’m just an ignorant digger who can’t read or write, but I can. I don’t know why I’m pretending this, but the less they know about me the better, because for some reason I think I am in big trouble, and that that tall thin man is trying to convince his mates I was a leader of the diggers. For God’s sake don’t let on, or they might separate me from the rest of you, and single me out for special punishment. So I’m trying to play a dimwitted ignoramus!”

“I can understand your concern. But if it’s any comfort, we’re all in big trouble. Remember that oath we all took, to stand by each other, and that includes you too. Look, let me talk to Carboni and we’ll make sure we don’t give you away – we’ve got to look after each other, all baker’s dozen of us.”

I made my idiotic grimace, and left him to sit in the corner staring into space.

The visits of the groups of guards led by the gaunt familiar man seemed to increase over the next few days, and finally I could stand it no more. I got off my bed and moved to the bars of the cell, and through them confronted them.

“Never seen a black man before?”

“Oh, we’ve seen you before mate.” The familiar stranger said. “We saw you in that stockade, parading around like a toy soldier with a toy gun. Then we saw you fire that gun and kill a man. It makes no difference to us whether you are tried for treason or tried for murder. They both carry the death penalty, so, if we are lucky, the last we’ll see of this

particular black man will be of him dancing at the end of rope. I hear black men can dance really well!" His mates joined him in raucous laughter. Then another guard interrupted their mirth, and nodded to me with a menacing look. "No, mates, I've been told that if we get him for treason, we not only see him hanged, but they will then disembowel him then hack him to pieces."

What a pleasant thought for me to mull over during the festive season.

A few days before Christmas, I got my chance to speak to Carboni about my situation, for we two were chained together for the long, uncomfortable cart trip to the Melbourne Gaol. On the afternoon of the first bone-shattering journey we had lots of time for a whispered discussion, interspersed by long drawn out diatribes against British justice by the volatile Italian.

I motioned him to listen to me quietly. "I have to talk to you about what to do. I didn't shoot anyone when they raided the stockade. I don't know how to defend myself, but I think I did the right thing when I was arrested. I can actually read and write in a few different languages, like yourself." Then I continued whispering in French, "Everything I learned as a slave inclined me to appear to be a poor ignorant, illiterate black man, but it's driving me mad not knowing what they are going to charge me with. I can't even take my mind off things by reading anything. What do you think I should do? Have I done the right thing?"

"None of us is any better or worse off than you." Carboni replied in French, in a hoarse whisper. "But if it's any consolation, I think you probably did the right thing, because if you appear to be too clever, then it could work against you. The simpler the story, the easier it is to maintain innocence, don't you think?"

I agreed, then immediately changed my demeanour to that of a cringing, foolish slave. I scratched my head, and said loudly in English, "I sure hopes they don't hang, draw and quarter me!"

Carboni seemed confused, then when he comprehended my performance, he laughed loudly, then shook the chains with which my left and his right wrists were joined until they clinked, in a gesture of solidarity and understanding.

I began to feel better.

## CHAPTER THIRTY FOUR

Melbourne had a better gaol than Ballarat, but it was no hotel - the cells were cold, even during the summer nights. The damp bluestone walls permeated the place with dank odours which managed to combine well with the smells of the vile food dished up to us daily. At least we didn't swelter with the rest of the population during what may have been hot summer days. We simply didn't know even what the weather was like outside our prison.

Here the guards seemed more professional. Some were even quite sympathetic. We anticipated spending a miserable Christmas in this palace, but were more distressed as we each contemplated the trials and punishment hanging over our heads. The painfulness of even thinking about our chances of surviving charges which we still had not been informed of was far worse than any overt mistreatment by malevolent guards. By now there were a few books available, including the bible. Whenever I thought myself free from observation by the jailers, I read from a large family bible which had somehow been left in our cell. It was illustrated, and while I read I always kept one finger next to a picture, just in case a prying warden should ask for an explanation from an illiterate such as I reading - I planned to mutely point to the picture. But I was never asked about it. We were not allowed access to newspapers, nor were visitors permitted, other than clergymen.

Through the kindly, avuncular priest who became my confessor, and visited me just before Christmas, I requested that Father Chartier be allowed to see me.

Two days after the feast I was taken from my cell to the chapel that was set aside for our spiritual consolation. To my surprise the elderly French priest entered the empty church, and we were left alone for a short while.

"How are you, my son? We have a lot of news for each other, eh?"

"Yes, Father, but I think you know enough of mine for the minute, so why don't you start by telling me what is happening on the outside."

We settled into the cramped confessional so that we should not be disturbed or overheard.

“The friend whom you protected found the horse, and rode off to the Frenchman’s hoard. He is now out of the Colony, but he left word that if you were able to get away, you should meet at the Atheneum.”

I nodded to let him know I understood, and he continued.

“There is some talk that you should all be freed, but the Governor is pressing ahead with charges of treason against you all. Yet the other Americans, and ring-leaders other than you thirteen, seem to have disappeared into thin air. A group of lawyers are prepared to offer their services free to all of you, and proper legal counsel at all levels will be provided for you all. Your photographer friend sends his best wishes, and his wife promises a feast when you are freed. He still holds your deposit in his safe. Now, have you anything to confess?”

Thus he indicated the conclusion of our personal discussion, and indicated that he was ready to proceed with his clerical duties. That particular session was painful for us both, tinged with sadness for lost freedom and friends, and I could not refrain from pouring out my shame and guilt about Eddie, about my indecision to bear arms, my cowardice of not becoming involved in the political movement much earlier. On top of this I had to consider my ineptitude by failing to fight alongside my partner at the foot of the flagstaff. I felt ashamed of myself, and once again I wept as I had when I had cradled the lifeless body of Eddie in my arms.

I noticed that these revelations brought tears to the eyes of this sympathetic priest, who remained silent for some moments before giving his considered response. “I think you have been very unforgiving of yourself, Jonathan. I see things in a very different way to you. If you consider that the only reason for your return to Ballarat after finding gold was to warn Sam and his friends, then one must consider that act as one of self denial - out of obligation to your friends. As both your friend and confessor I know that you refused to become involved in potentially violent miner organisations and individuals because of your pacifist views. For spiritual and ethical reasons you refused to be drawn into this fiasco until a very late stage, much later than even Eddie, a fellow pacifist. Your

forethought in providing your friends with a way of escape by buying a horse, by secreting gifts of *your* money, cannot be denied.”

“Then,” Chartier continued, “there is the question of your being asleep when the stockade was attacked. But you did not fall asleep at your post, but were, as I understand it, off duty. But even if you *had* been asleep at your post, it is not an unforgivable sin! You would certainly not have been the first to do that, and St. Peter himself...” He paused briefly for breath, before concluding, “Eddie chose to defend the flag to the death, you did not make him do it, and ultimately he is responsible for his own actions. That you had nothing to do with. You were off duty, and sleeping when the attack occurred, and did not have the same opportunity to get yourself killed as your friend. No, I don’t think there’s much to be forgiven there. But I do think you should think and pray about your oversensitive conscience, and your inclination to assume responsibility for the lives and actions of others.”

The priest had certainly given me a lot to think about, but I remained unconvinced, and I am sure that he could discern my feelings, for he proceeded without giving me any chance to reply.

“To that end I will ask you to read some passages from the scriptures which I have written down for you and have here.”

He reached into the cavernous pocket of his soutane and produced a bundle of pages, covered on both sides with his careful handwriting. It looked like a lot of scripture to me, but before I could ask the sarcastic question already forming in my mind as to which of them he wanted me to give priority, he again anticipated me.

“There are a few scriptural references recorded at the top of page one. Before I came I gave some thought into what kind of mood you might be in, so I translated a few passages from some of Eckhart’s sermons which I thought might be particularly encouraging, uplifting, or comforting to you. Please try to read them over the next few days, and if you want we can discuss some of these ideas when I return next week. Now let me give you absolution. Before I do, let me say again that you have shown great love for your friends. Now all you can do is to hope and pray.”



As we again knelt I was very thankful that he had not allowed me to ask my impertinent question about which scripture to read first, and as I received absolution I could not help wishing that I had only controlled my sarcasm and bad temper on the night before Eddie was killed.

That night I took out the hand-written sheets, which I had secreted into the old bible, and after reading and thinking about the scriptural passages, I turned with interest to the sermons. They had been translated into English, I guessed so that if I were caught reading them they would not be considered seditious by the authorities, who might not understand French. I had been quiet and withdrawn since my return to the cell, for depression and despair had descended like a black cloud following Chartier's departure. But as I read the titles to some of the sermons, I was at once surprised at the number so laboriously recorded in the tiny handwriting of the old priest. There were thirty-five pages of them.

The most interesting title which caught my eye that first evening was 'How all Creatures Share a Holiness of Being' – that warranted further investigation. Then there were 'The Greatness of the Human Person' and 'This is Spirituality: Waking up'. Finally, there were subjects about humankind being aristocrats and royal persons through their Christian faith.

Impressed, I there and then began a serious study of them, which transported me from that gaol, that cell, that bunk into another world of hope. For that very evening I picked at random the sermon 'This is Spirituality: Waking up', and there I found the following quotation "The union of God with our soul is vast – unbelievably immense, and God is so much above this vastness that no understanding or longing can attain him... For all that understanding can comprehend and all that longing can desire – that is not God." The sentence which followed seemed to explode in my mind, "Where understanding and longing end, it is dark, but God *shines* there."

I closed that old bible, carefully concealed the precious pages of notes, placed it under my bunk, and stunned, turned my back on my cell mates playing chess to face the

cold wall of the cell. I realised that since the attack and the death of Eddie, I had been trying to understand why all this had happened to me, who had only tried to be a good friend to Sam and Eddie. I knew that I would never be able to understand why I should forfeit my life so unjustly. It also struck me that since my arrest I had likewise experienced an intense longing – to be back home, or to be in San Francisco, or to ask my father what I should do, or for the whole thing not to have happened, but for me to still be working with my partner selling lemonade to thirsty miners. This incomprehension, as well as the never-ending longing for things to be different had been what had depressed me so much.

Now, across the centuries, came the answer from a fourteenth-century German cleric. That answer was that in everybody's life unjust, cruel, uncontrollable disasters occurred which were beyond understanding. Furthermore, despite our desire to go back in time and change things, such a course of action was not possible. Personal disasters brought the victim to a very dark place indeed, and that is where I had been since the attack on the Eureka stockade.

The ultimate answer was to keep going into the darkness, for one could only hope to discover God shining there.

That was when I had to turn my face to the cell wall, to hide my tears.

## CHAPTER THIRTY FIVE

When I awoke after an untroubled night's sleep I felt much better. I began to interpret the information given to me by Chartier the previous day. Obviously Sam had escaped, and had used the horse to ride to Melbourne, where he retrieved the envelope with his money, and left Victoria. I guessed that he had been able to sign onto a departing vessel as a cook. His message was that should I ever get out alive, we would meet in our old haunt in San Francisco. I was interested in the news that the authorities were preparing charges against us, and that we were to be properly represented by lawyers. At this point I gave thanks that I would be charged under British law, where even a black man like me was apparently entitled to be given access to counsel, rather than in most of the United States, where I suspected that I would have been summarily executed. So I did have some things to be thankful for. I wondered what we would be charged with, and almost revealed what I had been told to Carboni and Hayes, yet on second thoughts I decided not to reveal that I knew anything.

With Eddie dead and Sam safely on a ship for home I clearly could not call on either of these old friends for the companionship and counsel which I needed to survive. I made a much more concerted effort to get to know my fellow prisoners, twelve other men in the same predicament as I. Hayes and Carboni I knew well, and the former was of such a strong personality that I began to become friends with the other ten men through him.

A few days later two of the more malicious guards came to open up our cells for us to clean out, and in a taunting manner revealed, "The rumour is that you are all to be tried for treason."

This information caused us all to pause, and Carboni wondered aloud, "I wonder what sentences they will give us if they convict us?" The guards watched and listened closely to everything that was said. I was standing alongside the fiery little Italian, so took the opportunity to grin my idiotic grimace and, after scratching my head oafishly, I suddenly made a cutting motion across my throat, then hanging my head to one side, as though I had just been hanged. I paused for just a second or two, then placed my head

upright while I cackled insanely. Both prisoners and guards laughed at my crude pantomime, and I felt that I had underscored my own defence of being a simple and ignorant man.

A day or two later my name was called out, and with a feeling of dread I was led along dingy and depressing corridors until I reached the door of an office, and made to halt and stand to attention before it. The guard knocked boldly on the door, and after permission was given to enter he opened it a fraction, announcing, "The prisoner Joseph is here to see you." After I entered, and the door was loudly slammed behind me, I turned to the well-dressed, austere man seated at the small table at the centre of a cubicle. I breathed a sigh of relief, for I thought that once again I was about to be interrogated by a group of hostile guards and police. As I approached the man stood, and introduced himself. "My name is Grant, and I have agreed to act as your attorney, if you wish me to do so."

Once more I found myself amazed by the courtesy with which the man treated me, and again compared it with the treatment which I might have received in the United States. Here was an attorney offering to represent me, and actually offering me the choice of his services. But there was something I thought I'd better get into the open before I agreed.

Embarrassed, I stuttered, "But I have no money to pay you with right away, so..."

He immediately understood, and interrupted, "We are quite willing to offer our services gratis, er, free."

It was my turn to interject, "Our?"

"Oh yes, I will be your solicitor, or attorney, but should your case actually come to trial there will be one, perhaps two barristers representing you in court, and presenting your defence. Their services would also be provided at no cost. Would you like to accept my offer?"

"It's the best offer I've had for some time, and I would be delighted if you would represent me." A slight smile crossed his face at my weak attempt at a joke.

"I'm sorry, please sit down and I'll tell you what will probably happen in the next few days. You should be indicted shortly for whatever crime with which you are charged.

Thereafter you will be served with a full disclosure of what those charges are based upon. Do or say nothing, and I will obtain copies of these documents. Depending on the charge your barristers acting for you and I will prepare your defence, and will be given sufficient time to do so, in full consultation with you. So you will hear from me again, and we shall meet together with your barristers following your indictment.”

“We do not know what any of you will be charged with, but try not to concern yourself too much, for there have been a number of large public meetings demanding your release by amnesty. So we shall be in touch.”

Clearly I had been dismissed, so I made my way back to the cell, and the gaoler called for Timothy Hayes to accompany him. Timothy looked at me, but I could only shrug before the gaoler insisted Timothy accompany him.

My cellmates then crowded around for me to tell them where I had been, and I whispered an account of my meeting with Grant, not forgetting the head-scratching and other antics now expected of me by my companions.

I concluded my account with a grimace and mimicked a hanged man. “It’s alright for him to tell me not to worry, but we all know how much the Governor listens to demands for amnesty or anything else!”

I did not have to give them chapter and verse from the last few days before Eureka, and my colleagues walked silently away, some shaking their heads, as they remembered the intransigence of the government in the face of massive public meetings. None of us held out much hope for an amnesty. Like my colleagues I was quickly dashed into depression, for though we were called out one by one, we shared an unspoken belief that the administration wished to make an example of at least one or two, if not all of us. For the next few days our uncertainty contributed to our foreboding.

That scepticism became justified when, on 6 January 1855, we were each served with a sheaf of documents describing the charges against us. For the next two days, not only I, but all of my comrades, were plunged into gloom. It was only when I recalled the practice of surrendering oneself to the darkness of these shattering events that I began to regain my spirit of resistance, and courage in the face of disaster. I now knew that significant

quotation of Eckhart's by heart. As I lay depressed on my bunk, I concentrated on the message it contained. I had reached the limit of my understanding of what I had done to be here despite all of the details of the charges leveled against me, and I constantly failed to find the answer of why this had happened to me. Sure enough, I had reached the end of my understanding. I could not contain my longing to be back home with my father, comfortable in his study; to be making love to Mary-Ellen; to be on the ship working alongside Sam *en route* to San Francisco; to be mixing lemonade powder with Eddie, then being beaten by him in a short-lived game of chess.

Yet, as Eckhart predicted, despair had brought me to the end of all understanding and knowledge. But if God were shining in that darkness, I could not see Him. Then it occurred to me that to shine in the dark implied an impenetrable blackness. A raven blackness, blacker than the colour of my skin, blacker than Allan's hatred of me, blacker than the malevolence of the Governor of Victoria. Ultimately, if God shone there in that unlit world, then one could only believe that it was so, and go through the fog in search of Him. I didn't immediately find Him there, but embarking on that quest began to lift my spirits. As my hope rose, my dejection slowly gave way to an indescribable inner peace.

But not for long. Later that afternoon the process of calling us out to consult with our solicitor began again, and once again I dreaded to hear whatever news he might have for me. I was the first that walked those musty unswept halls to the tiny office.

The beaming Grant was a welcome surprise, and he motioned me to be seated with an expansive wave of his hand toward the chair facing him.

"Isn't it wonderful, the bureaucracy have demonstrated their incompetence by illegally serving you with the description of your crimes, before indicting you first."

"What difference does that make?"

"First, you will have to be properly indicted, and the press, which is already antagonistic toward the Governor and his administration for these trumped up charges, and who have been campaigning for an amnesty for you all, will make these officials the laughing stock of the Colony. Those in power have, I understand, elected to charge all thirteen of you with treason, and that will give us legal advantages which we shall explain to

you in detail in later meetings. Just let me say that treason is one of the most difficult crimes to prove, unless there is incontrovertible evidence against you all. We do not believe that such evidence exists.”

“So you don’t believe that it will come to this?” Here I motioned my throat being cut, hung my head until it lolled, then rolled my eyes backward.

“No,” he chuckled, “I think that we can make them regret that they did not bow to public pressure, and grant you all an amnesty! At the risk of alarming you I will show you this: it’s an editorial from a recent newspaper article about you all. The guard does not know that I have it with me so read it as you might a legal brief.”

I took the editorial which had been clipped from *The Age* and pasted to a piece of blank legal paper. It accused the Governor and the legislature of wilful disregard of public opinion to proceed with the trials, and implied that it might be very difficult for any jury to convict us, the ‘men of Ballarat’.

When I had finished reading, Grant continued.

“As I say, I and my colleagues all feel that there is little chance of a conviction in any of your cases, so do try not to become alarmed at anything the guards or others in authority might say to you. Warn your colleagues that there may be attempts to scare some of you into turning against the others by giving Queen’s evidence. So be on your guard!”

I left the meeting in a slightly more optimistic frame of mind, and told the others what Grant had said to me. But that night, in the silence and loneliness of the cell, while my friends snored around me, those pernicious doubts about the outcome of these perilous charges which we were about to face kept me awake.

What, I asked myself, were our real chances of avoiding the noose? Could we trust these lawyers who had dedicated their time and services freely to us? I felt the fear and panic rising like gorge from my innermost being. Then, as I tried to calm myself, I discovered that I had the ability to recall whole conversations *verbatim*.

The first episode I was able to remember, was with Father Chartier, who had been explaining how Eckhart had defined humility. I could see the old man’s face as he cited the text from one of the mystic’s German sermons. “True humility is when a man or

woman clasps complete abandonment while remaining in a state of grace. Such a person faces serenely all that he or she is able to is able or unable to do.”

I wondered for a long time what this quotation had to do with me as I tossed and turned in my narrow bunk. Then it began to become clear to me. I had done as much as I could for Sam, to enable him to escape should he need to – this was something I had been able to do, and did do. I had been unable to come to the aid of Eddie, however, as he flailed around with his useless cutlass in the futile attempt to defend the southern cross flag at the stockade. No matter how I regretted my unprepared, sleepy reaction to the attack, no wishing that things might have been otherwise, could change my inability to save my friend. In any event, I too would have died defending a flag which was, ultimately, only a symbol of independence and defiance. Furthermore, I had been unable to avoid arrest and trial for High Treason, but at the same time, I had been able to present myself in such a way as to fit the stereotypes of others, and might be able to use the ploy in saving myself from execution.

It was as though the old priest was advising me to simply let go and let be those things which I could not control, and to do my best to achieve those things which I was capable of and able to accomplish. It occurred to me that to accept these truths, and to learn to abandon myself in a state of grace to God was a way to freedom.

It is a well known fact that any slave will seize freedom whenever and wherever it is offered. And this former slave once more asserted his right to freedom before falling blissfully asleep, for I was beginning to learn that there is an inner liberty which far exceeds freedom of action.



## CHAPTER THIRTY SIX

After a few days I was again called out to be interviewed, and Grant introduced me to a tall, spare, reserved but confident man who was to be the leading barrister in court, Mr. Chapman. After we had been introduced and shaken hands, he, Grant, and I sat around a small desk, and commenced the preliminary work on my defence.

Grant started proceedings by saying, "Mr. Aspinall, your second Barrister, is indisposed today, but he will come to see you tomorrow." He paused, and he and Chapman exchanged glances, but gave me no further explanation. There was a brief silence, during which I made up my mind to take charge, if I were able, of my own defence.

"I should like you to understand that I have sought to deceive the authorities for reasons which I shall explain. I take it that these discussions are subject to the rules of client privilege and secrecy governing your profession?" I was gratified to note that this question surprised them, they quickly confirmed this fact, and I resumed. "Despite receiving a pretty good education in New Orleans before coming here, in my twenty-four years experience has taught me that most white people assume that all members of my race are ignorant, illiterate fools and buffoons. When I was arrested I decided to conceal the fact that I was literate in English, French and Spanish, and acted the part of an uneducated moron. So far as I know this deceit has been successful, and I tell you this first to see if we can build a defence around it, but I am open to your advice on the best way to proceed legally. I am not very well-schooled in the laws of my own country, and much less so here."

They were both clearly astounded by this revelation, and each blinked several times, before Chapman replied.

"Well, we have both done you the injustice to which you referred, and in discussing your defence have made that assumption. So I apologise on our behalf. Tell me, what have you done to carry out this ruse?"

"I have done nothing but acted as they expected me to act – thus."

At this point I demonstrated my cringing ignorant parody of a shambling, incoherent, head-scratching fool of a man. When I finished they were both laughing, before Chapman switched to very good French.

“Many years ago as a young man I left England, and ran a newspaper in Québec, or Lower Canada. I mention this because while I was in that Province there was a rebellion, and many of my French-Canadian friends were arrested, and a few were convicted of treason and transported to Sydney as political prisoners.”

I replied in the same language. “That must have been some time ago, didn’t they end transportation of convicts to New South Wales some years ago?”

I could see that both Chapman and Grant were impressed, and I responded with appropriate modesty by delivering a Gallic shrug, a sort of *coup-de-grace* befitting a French gentleman. “Anyway, will you find my stratagem of use, or should I discontinue it? I am open to your advice.”

“No, no, no, by all means continue to delude them, for I am beginning to have a few ideas on how we might exploit this assumption that we Europeans,” Chapman was just able to avoid saying ‘white’ – “very unjustly make about people of colour.” I think that Mr. Grant and I have much to talk about before returning to review your defence strategies. In any event Mr. Aspinall will call to discuss things with you when he is no longer indisposed. Thank you for your frankness, and for your help in planning how to defeat this unjust charge against you. We’ll call again within a day or so.”

I walked out of the room on air, feeling the most clever fellow that ever walked the earth. Humble? Me?

“So you’re the clever little nigger boy that’s so captured the imaginations of my colleagues?”

I knew as soon as I walked into this room that I despised this sharp-tongued Irishman called Aspinall. Immediately, I knew that I was in trouble, for I hated the pudgy drunk on first sight and smell. Yet I must literally trust him with my life. My feelings of

loss of control and helplessness enraged me. I wasn't going to show this smug racist that I was in anyway impressed by his breezy insult. I decided to show him that I had a fine line of invective too, and fight back.

"Rough week or two, your indisposition? The smell of liquor on a man's breath always gives him away regarding claims of indispositions. Astute, sensitive men like Grant and Chapman may call it an indisposition, but this man calls them benders. Slavery is a hard school, and as a former slave, I too enjoy to match wits with men softer and weaker than myself. So remember, when dealing with me in the future, to be on your guard not to upset me too much, or you will be dining on teeth with your brandy. Incidentally, two as well as one can play the insults game, and before you ask let me tell you why I am so angry, for no one calls me a nigger and gets away with it. This is particularly true for a drunk like you!"

His reaction was not what I expected. He suddenly became very serious, and very professional, and after pulling up a chair he sat down. "Just as I thought, you claim to be able to play the oh-so-ignorant unschooled black man, but as soon as someone throws in a racial insult, the type of insult you might receive from one of my colleagues at the bar, for instance, suddenly you lose all control. But let me tell you, that if we are to get you off the charge of high treason, using the artifice you suggest, you must learn to control that temper of yours."

"If I had desired," he continued, "a few moments ago I could have used my wits to anger you further, and to goad you to say all sorts of things, which, in a court of law, in front of twelve jurors, would lead to your execution. Remember, even on my worst, my most 'indisposed' day, I can outwit you, and anyone else in this God-forsaken hole! Why, because I have been properly educated in the law, and unfortunately for you, despite your many abilities and attributes, you have not." As he delivered this last sentence, he reached for his hip pocket, took out an ornate silver flask, opened it, then took a great swallow, before recapping it and leaving it on the table before him. "But I'll say this for you, you do have a fine mind, are articulate, and also have a lively wit – but not as good as mine, even on my worst day."

He took a short breath, breathed his noxious fumes like a fiery dragon, before continuing. “So, if you wish me to join Mr. Chapman as a junior barrister to represent you in court, and to get you acquitted of this ridiculous charge of High Treason, then you must decide here and now, for I refuse to waste my time on an unwilling client, especially one for whom I have waived my not inconsiderable fee!”

I almost interrupted him, and it was on the tip of my tongue to dismiss him there and then, but a curious thought struck me. Could this be a chink of light shining in the dark? The practice of letting go and letting be could be undermined by foolish precipitous action. So I kept my mouth shut, and reserved my opinion until later, and decided to hear him out, first for my own possible benefit, then to show him that I could successfully pose as the ignorant field hand in spite of deliberate provocation. He waited long enough for me to respond if I had chosen, nodded at me equitably, then continued.

“If I am to represent you, I insist on knowing the truth, whether we reveal any of it in your defence or not; furthermore, I must be absolutely certain that you will follow my directions, and the instructions of your defence team fully and explicitly. We are the professionals who can get you your freedom, and once you agree, I expect a sworn oath that you will not disobey our orders. If you can commit to that, I am very certain that we shall see you walk from that court a free man. If not, it is your constitutional right to seek other Counsel.”

“How can you undertake my defence if we despise each other so?”

“I do not despise you, Sir. I respect you as an educated man with the ability to match wits and insults with perhaps the sharpest wit in Melbourne.” He was clearly referring to himself. “If there is any despising, it is on your side, for I believe that you probably regard me as an insignificant, weak, and immoral person, and you disapprove of my drinking.

That, Sir, is your problem. I happen to think that you are self-righteous snob – but I do not despise you for these personality traits. I am a professional, and I like professional challenges, almost as much as I enjoy being considered something of a wit.

You are probably asking yourself why I am willing to represent you for no fee, and I shall take up a few more minutes of your time to explain the complexities of that

motivation. First, the case of the diggers will give me a great deal of publicity, through the press, as the unfolding details of your trial are described in the newspapers. Secondly, these cases will be vitally important in the legal history of Victoria, and every lawyer would leap at the chance to represent any of you. Then, it is relatively simple to defeat authorities so wilful as that currently lead by Hotham, a man only barely good enough to command a warship, and that not very well. This martinet will insist on trying you all for the crime of High Treason, when there is little, if any, chance of securing a conviction against any of you. You will recall how wrong-headed he was with respect to the administration of the gold fields, for you and others suffered the injustices for a long time.” By now he had risen from his chair, and was pacing back and forth across the room, gesturing to an unseen audience, or jury. I could only sit and gape at him as he continued his monologue.

No, Hotham has a misguided sense of justice, and the blindness of an autocrat. Furthermore, he has only himself to blame for appointing an Attorney and a Solicitor General of very low ability, who both seem to lack any reasonable degree of common-sense. Believe me, your dislike and disgust at me will not deter me from leaping at the chance to represent you with Grant and Chapman, two excellent men, incidentally. Why, even though I think you to be a self-righteous snob, I nevertheless respect you intellectually, and think you showed a great deal of insight in seeking to deceive your captors. In the light of these circumstances, I am more than ready to assist you, because I happen to think you are a generous enough person to be able to put aside your personal dislike for me.

If we each decide that we are able to put aside our personal feelings, and if you will give me your assurance that you will follow the instructions given to you by your team of legal advisors to the letter, I shall be happy to represent you. Do you accept my terms, and give me your word as a gentleman that you will not change your mind?”

I had to think very carefully, but as I looked into his earnest, expectant eyes, I could not put aside my repugnance for the man, and my initial dislike of him was made more intense because of the odour of his foul alcohol-laden breath, mixed with the insipid perfume of his cologne. I could not bring myself to agree to his terms, but I lacked the

courage to tell him that I hated the sight of him, and wanted nothing more to do with him. I attempted to mask my feelings as politely as I could by asking him to give me until the morning to think about the conditions he sought to impose on me. "I am sure you can understand that this is a matter of life and death to me, and if you could come back with Mr. Grant and Mr. Chapman tomorrow, I will be ready to accept or reject your kind offer."

"Of course, my dear Sir, I am happy to give you a short time to think about things, for it is most important for us all that we clearly understand where we go from here. I'll ask my colleagues if they will return with me in the morning. Good day to you."

With that he quickly gathered up his things and left. As he did so he could not hide the fact that his feelings had been wounded by my rejection.

It took me many hours to decide if I were ready to trust Aspinall, and I found that my dislike for the man stood in the way of an objective conclusion to my dilemma.

Late into the night I lay awake thinking and praying about my defence. I had to admit that his treatment of me, and his labelling me a snob both annoyed me and hurt my feelings. I had been called many things, but never a snob. Was I a snob, could a man with my background actually be one? Why did I dislike him so much? The longer I pondered these questions, the more certain I became that he was probably right about me. I would never have thought that I had looked down on Allan, for example, but I had to admit that all his life I had regarded him as a red-necked buffoon and simpleton. I had also considered men like Vern and McGill inferior to me because they were braggarts and unprincipled rabble-rousers. Aspinall I thought beyond contempt for his allowing alcohol to dissipate his undoubted talents as a man of education, wit, and legal training.

But was I willing to trust someone I scorned so instinctively with my life?

To Grant and Chapman, however, I felt inclined to make such a commitment. I therefore had to conclude that it was bias and snobbery alone which made me even hesitate, for there was no question that Aspinall was in every other way well-fitted to preserve my existence.

## CHAPTER THIRTY-SEVEN

Grant started the early morning meeting by asking if I would accept their terms for defending me, or whether I wanted to ask for other lawyers to represent me. "We must assure you that you are perfectly entitled to request other lawyers, for it is most important that a man being tried for a capital offence should fully trust his counsel, and be prepared at all costs to follow their instructions implicitly. We know that we ask a lot from you, but believe me, in our experience we have found it to lead to disastrous consequences, if, once a legal course has been embarked upon, it is changed. Come now, what is your answer?"

Even as he had spoken I made up my mind to accept their help, and the terms that they required. "Yes."

Their reply was quite controlled and unemotional. A rather smug Aspinall commented after we had all risen and shaken hands. "Very good then, we hope to have you a free man in about a month." But I still could not find it in myself to like the man, not that it seemed to matter to any of the three lawyers what my personal feelings might be.

Grant immediately got down to business. "We have all had time to think about your background and history before coming to this country, and we believe that you correctly followed your intuition by not revealing that you are an educated man. We wish you to do all in your power to maintain the pose of a simple, uneducated, illiterate digger, who simply came here to dig for gold. Most importantly, you are to adopt the guise of a man who is completely unschooled in politics, especially those of your homeland: democracy, and all that it entails. It may be absolutely essential that you avoid giving the jury any impression that you are a great lover of democracy, and that you might be inclined to defend your democratic rights by force of arms."

"In all honesty, democracy never freed *me*! But tell me, when do we start rehearsing what I shall say on the witness stand?"

“All in good time, Jonathan.” For some reason I was elated that Chapman, the man I really liked and admired, had at last got around to calling me by my first name as though I was a personal friend.

Aspinall now joined in the discussion, by adding unctuously, “The prosecution have made a great error, for they have provided details of their case against you, together with the names of witnesses to be called by the Crown, as well as a list of jurors from which the jury are to be selected. You should first have been properly indicted in a court hearing, and this will delay your trial. We benefit by insisting that legal formalities be followed to a ‘t’ – making the Crown look inept and incompetent. At the same time we have lists to check, and longer to prepare your defence.” He was quite delighted by his cleverness.

Grant then added his contribution. “We may find that there is no need for you to testify at all, for sometimes it is better to maintain innocence through silence.”

But I wanted my day in court, and to be allowed to testify on my own behalf. “No, I very much wish to fight these charges by testifying to what I know and saw.”

Chapman noticed my annoyance, and immediately attempted to mollify me. “Well, we don’t have to make our final decision regarding the details of your defence. But I must remind you of your commitment to following our advice in its entirety.” He said that they would probably not see me again before my indictment in a few days time. “But rest assured we are diligently preparing to defend you.”

The frowning judge asked me, “John Joseph, are you desirous of having assigned as your Counsel Mr. Chapman and Mr. Aspinall?” I remained silent, just blinking and scratching my head. For some reason the Victorian courts preferred the idea of leaving it all to the lawyers to sort out, and went to ridiculous lengths to make sure we remained silent. Thus when we appeared on 16 January 1855 before Chief Justice Sir William A’Beckett to answer the charges and to select legal counsel, he first ordered us to make no reply if we agreed to the assignment of barristers to represent us.



The judge then asked us. "Do you wish to have a copy of the indictment, as also with a list of the Jury Panel and a list of the witnesses with the names, addresses and professions of the witnesses to be called against you?"

We thirteen accused looked at each other in utter confusion before Grant stood and said that he wished to receive copies on our behalf. We were all baffled by appearing together, and I for one wondered if we were all to be tried at the same time, or separately. The fact that some of us had different counsel might make things messy. Then I stopped worrying about it, leaving it to my defence team. We watched silently as the discussion continued.

The Chief Justice asked Grant, "Are you prepared to plead now?"

"No, Your Honour, not until I have a copy of the Indictment."

The Attorney General, William Stawell, stood, and addressed the judge, asking for him to refuse to allow the hearings to be delayed, as we had been provided with the information against us ten days previously to the present indictment proceedings. I had never seen Stawell before, but he did not impress me as a really sharp lawyer; in fact, for a man holding such a high position in the government, he seemed uncertain of himself, and shuffled through his files and notes as though searching for something while he addressed the court.

The judge also seemed unimpressed by Stawell's performance, and took pains to lecture the official on the many problems of charging prisoners with High Treason in Victoria. He then ruled in favour of Grant, by allowing our lawyers ten full working days in order to prepare properly for our defences. He also stipulated that our attorneys should be allowed free access to us in prison from 9. a.m. to 8. p.m. daily. Some other legal wrangling took place concerning Vennick, who wanted to plead then and there, and have his case heard immediately. Again the judge ruled against this, saying that we should all be treated the same. The indictment session then ended, and we were taken back to prison.

We silently sat around our cells. I felt relieved that I knew what the charges were against us, but at the same time I feared that something might go wrong, and that I would finish up dangling from the end of a rope. It was a sobering thought, and I suspected that

my co-accused may have felt the same way. But very soon after the proceedings I was called in to see the beaming Grant waiting for me in the small room which served as our meeting place.

“A good outcome, don’t you think?”

I grunted ungraciously. Once again I was despondent.

He took some papers from a file before him. “Here, read these, they may cheer you up!” He had cut and pasted onto a sheet the editorial from that morning’s *Age*. As soon as I began to read my spirit started to soar.

Under the heading ‘The State Trials’ the editor took Governor Hotham to task, for his refusal to grant clemency to myself and my twelve comrades. The editorial went on to note that:

the decrees of Destiny and Sir Charles Hotham will not always be alike irreversible. The avenging Nemesis which presides over the fate of doomed mortals, sometimes works out her purposes by leading her victims to imagine that they are perfectly secure, just at the moment when they are about to sustain the shock of irretrievable ruin; nor is history deficient in examples of men, and even of governing personages, whose final downfall has been consummated by that very act in their lives which they deemed their masterstroke of wise and far-reaching policy. And there is further consolation in the fact that the law of retribution is forever at work, though it may be silently and unseen – that injustice and wrong never go wholly unpunished...

Grant could not contain himself while I read. “Isn’t it splendid? What do you think of that?”

I held up my hand for him to allow me to read the entire editorial:

Sir Charles Hotham... betrays the very cowardice he is solicitous to conceal – the weakness of *fearing to be thought weak* – by an assumption of rigorous severity; - an admirable virtue, no doubt, in the petty commander of a shipful of tipsy sailors inclined to be mutinous, but hardly in keeping with the character and position of the Governor of a community of free and brave British subjects.

As I read I noted that this editor pulled no punches: the Governor and his officials were severely taken to task for their petty vindictiveness towards us, the accused. The writer

pointed out that the charges against us had been fashioned to give the judge no alternative but sentence us to execution if the jury found us guilty.

Most telling of all, however, was the claim that no fair-minded jury in the Colony could, or would, find any of us guilty of High Treason. The Editor continued bitinglly:

Nothing that combined tyranny, rascality, and treachery can effect, will persuade any twelve honest colonists of Victoria that the Government is immaculate, and that, therefore, those thirteen unfortunate men should be hanged...

*If they be found guilty! Then may Heaven help the State Prisoners!*

*If they be found guilty! Then may Heaven help the Executive Government of Victoria!*

Finished, I raised my eyes to regard Grant, and I could not disguise my hope and joy that the views expressed in the paper might be representative of those of the community which would stand in judgement of me. "If the Editor has correctly gauged public opinion, then we might all get off with our lives!"

Grant thought over his reply for what seemed like a long time. "We think that you all should take heart from this editorial. Furthermore, we think that you in particular have the basis for a very strong defence. Here's how we think we should defend you."

## CHAPTER THIRTY EIGHT

Prisoners at the bar, the charge against you in the first count of the information to which you are now called to plead is, that you did, on the 3rd December, 1854 (being at the time armed in a warlike manner), traitorously assemble together against our Lady the Queen; and that you did, whilst so armed and assembled together, levy and make war against our said Lady the Queen, within that part of her dominions called Victoria, and attempt by force of arms to destroy the Government constituted there and by law established, and to depose our Lady the Queen from the kingly name and her Imperial Crown.

In the second count you are charged with having made war, as in the first count mentioned, and with attempting at the same time to compel by force our said Lady the Queen to change her measures and counsels.

In the third count the charge against you is, that having devised and intended to deprive our said Lady the Queen of the kingly name of the Imperial Crown in Victoria, you did express and evince such treasonable intention by the four following overt acts:-

1st. That you raised upon a pole, and collected round a certain standard, and did solemnly swear to defend each other, with the intention of levying war against our said Lady the Queen.

2nd. That being armed with divers offensive weapons, you collected together and formed troops and bands under distinct leaders, and were drilled and trained in military exercise, to prepare for fighting against the soldiers and other loyal subjects of the Queen.

3rd. That you collected and provided arms and ammunition, and erected divers fences and stockades, in order to levy war against our said Lady the Queen.

4th. That being armed and arrayed in a warlike manner, you fired upon, fought with, wounded, and killed divers of the said soldiers and other loyal subjects then fighting in behalf of our said Lady the Queen, contrary to your duty and allegiance.

In the fourth count the charge against you is, that having devised and intended to levy war against the Queen, in order to compel her by force and constraint to change her measures and counsels, you did express and evince such treasonable intentions by divers overt acts, which overt acts are four in number, and the same as those already described in the third count.

I don't know about my co-accused, but the official wording and severity of these charges petrified me. But even as I thought of my predicament, and the serious nature of

the charges, I remembered some of the words of that editorial in the Age of nearly a week previously that had so delighted Grant and me. I could remember that sarcastic passage by heart:

The solemn mockery of a state trial, with all its array of *extra* parchment, horsehair, bombazine, legal verbiage, and professional cant will not change it. The false swearing, be it ever so unblushing, of a million suborned troopers, traitors, and spies, will not change it... The shallow hypocrisies of a whole legion of attorneys and solicitors, general or special, be their visages never so parched, their smiles never more sardonic, their efforts at pathos never so Pecksniffian, will not change it... twelve honest men will not fail to hold their belief that the “outbreak” at Ballarat was simply an outbreak against the small tyranny of a herd of despicable officials, and not against the person and crown of the Majesty of Britain.

The memory of this passage amused me so much that I almost laughed out loud, but I caught myself just in time, remembering that I was to present myself as a simple, but not rebellious, man. I contained my display of mirth to a wide smile, a simple, drooling grin, and a furious scratching of my scalp. I had been assigned my role, and I determined to play it for all it was worth – but not to get people’s backs up by overplaying it. Nevertheless, I knew that I was in deep trouble, and while I had made my commitment to follow the advice of my legal team, I experienced a terrible doubt. Had I been wise in being so acquiescent? Should I have shopped around to see what other lawyers might have offered me?

To my shame I wondered if I should have turned Queen’s evidence for the Crown, and perhaps saved my skin by giving evidence against my friends. It had been rumored that the Crown was prepared to offer lighter charges and sentences to any of us prepared to switch to become prosecution witnesses. At the same time as I entertained these thoughts, I loathed myself for having even given them consideration. So my mind drifted while the legal wrangling began, and I had to force myself to give full attention to the proceedings of the Court.

Hayes had claimed that he should not be made to answer the charges the indictment against him because he should have been described as ‘Timothy Hayes’ with the

words 'miner' appended to his name. Hence, he asserted, the indictment should be quashed. Setting aside this ploy for a moment, the judge asked how the rest of us answered the indictment. We all pleaded not guilty.

The judge then sought to decide about Hayes.

It was at this point that Stawell began to reveal a great lack of confidence in this prosecution which he himself headed. He was not the type of man to inspire confidence, being at once diffident yet aggressive, submissive yet argumentative and petty. As an official he was charged with great responsibilities, yet as a public official and a trial lawyer he seemed to hum and haw - to find it difficult what decision to make on what seemed to me to be everyday legal questions. This seeming uncertainty was not aided by his piping, whining voice which in argument became almost inaudible. The penetrating gaze of the Chief Justice then fell on Stawell, and initiated the erosion of the man's self confidence.

"Do you demur, Mr. Attorney General, to this plea of Hayes, or join issue; or do you wish time to consider?"

Instead of answering the Chief Justice, Stawell analysed the question aloud at some length. While this wordy monologue was way above my head, I thought to myself that any competent lawyer should know the difference between demurring and taking issue: but the Attorney General seemed to be far away from making up his mind on his next step. Eventually the judge tried to help him out by interjecting, "It professes to be a plea in abatement." Whatever that was.

"It is difficult to say what it is!" Stawell mused aloud. Then he started in on another long verbal analysis, before saying uncertainly, "I will join issue on the demurrer. If your Honour will peruse it, I think you will say it is a demurrer, and save time."

A slightly irritated Chief Justice sniffed loftily, "I cannot offer any advice."

Stawell was so engrossed in his reduction to elements of the question that he totally ignored the judge's observation. For what seemed an hour he went on and on, concluding with another pointed question to the judge about what *he* thought the pleas might be.

"I think the Attorney General should take some definite course, and not continue asking the opinion of the Court." The robust, irate figure of Mr. Ireland, Counsel for one of my co-accused, confronted the judge.

This stung the Attorney General into decisive action, and a heated discussion took place between him and Ireland regarding interminable and indecipherable aspects of Hayes's plea. All the legal jargon was beyond me, and as it had nothing to do with me I took the opportunity to appear in a world of my own, scratching my head furiously until I thought I had drawn blood, while rocking to and fro like a wayward child. Smiling, I sought to engage some of the wandering attention of the onlookers.

Finally, A'Beckett had had enough, so he ruled that Hayes should stand trial with the rest of us. Hayes then also pleaded not guilty. Stawell then set about completely disintegrating his remaining credibility by demonstrating how rigidly he applied the law. To me he seemed small-minded and vindictive, but then, so do many lawyers it has been my misfortune to encounter. As I watched him ply his trade, he really scared me, because I knew very well that he would happily deprive me of my life. Therefore, I reminded myself not to dismiss him as an incompetent fool, whatever he might appear.

Ireland proved that he could be strong-willed too, for he staunchly resisted every attempt by the judge and Stawell to try us all together. The Attorney General seemed most inconvenienced by this intransigence, as did the judge, who lectured us all, "The prisoners will understand that by joining in challenges they could all be tried together." Stawell sang along in unison, as though by so doing he and the judge could beguile us all to walk together like lemmings to the place they chose to execute us.

So the Attorney General tried to deceive us by the comment, "Exactly, it would save a great deal of time and be more convenient; of course it is for the learned counsel to sever if they please." The Chief Justice and the Attorney General were quite clearly set against us; after all, they had their show trial, and because it was important to them to find us all guilty, they thought we would lose heart as they applied the formality and legal trappings and mumbo-jumbo of their witch-doctor trade, and become frightened of them, making it easy to swing us all from ropes. By now I could feel myself growing angry, and

I had to remind myself that my task was to play the simpleton convincingly. What I really wanted to do was to stand on my own two feet, and tell them with my mouth that they did not fool me one iota. Then I hoped that Chapman and Aspinall would properly defend me. And scratched my head again.

Another of the defence lawyers simply rose to his feet right in the middle of these unctuous blandishments, and dismissed them. Dunne politely requested that Timothy Hayes's trial be postponed as his witnesses were not present.

Again judge and prosecutor were not pleased - they both took great pains to make it clear that it was most inconvenient. This struck me as like men churlishly disputing an inconvenient time for dinner rather than proceeding with a trial for a man's life without due care to provide for him to call witnesses for his defence. It then occurred to me that we were dealing with officials seriously out of touch with the events in the real world. Nevertheless, the powerful were determined to demonstrate their jurisdiction, so after prolonging the argument they insisted on the trial being even further delayed for the clerk to call the names of the missing witnesses. None of whom were there. Like it or not, Stawell and A'Becket were forced to remand Hayes in custody, and call the next prisoner.

Ireland stood and made the helpful suggestion that as Dignan, Vennick, and Phelan all had their respective witnesses present in the court, these prisoners were ready to proceed with their trials without delay.

The resentful Stawell did not accept this gesture of co-operation by the defence counsel, but in his bureaucratic tone insisted, "We will take them in the order they stand in the information." Thus the GREAT MAN made his decree. So my mate Raffaello was called up. His lawyer was Ireland, and once again this imposing man stood to plead that this trial also be postponed, as, like those of Hayes, the Italian's witnesses were not in court. Again Stawell had to quibble, whining that he had been informed not minutes ago, that "one of the *alleged* absent witnesses, the Rev. Mr. Smyth, is outside the court."

Pandemonium.

An officer of the Court caught lying. The Chief Justice sighed, and casting a baleful eye over the Attorney General, said quietly, "The witness had better be called



outside the Court.” Again proceedings ground to a halt, while the clerk called not only Father Smyth, but also John Plant and John O’Brien. None of these people answered.

It was time for Mr. Ireland to deftly wield his knife.

Patiently he explained to the judge, “This trial has been postponed twice before, not by any default on the part of the prisoners, and these witnesses were present on both occasions!” Ireland refused to let the judge wriggle out of the fault of the prosecution, and pressed home his point. “It has been postponed through a formality not having been complied with; that was the cause, but since then a day has been fixed, and the trial has been again postponed.”

This type of petty squabbling continued, and to my untrained eye both prosecutor and judge seemed dangerously biased against us, the accused, as well as frighteningly arrogant and incompetent. At least there were not as yet any jury members present in the court, but these officials responsible for the trial might have helped to persuade the jury on our behalf. At least the press would be here, and I hoped that the pettiness of judge and prosecutor would be noted in their reporting. At our usual early morning meeting Grant had made that very point, that, where the authorities were so clearly biased and unjust, the press, and ultimately the people would deny them unbridled rights to trample over the defences of a just society. For myself, I remained unconvinced. But Grant had assured me that our team knew Stawell intimately, and they felt certain that he would not be able to conceal his narrow-minded vindictiveness from an honest jury. Inevitably, as Grant had predicted, Raffaello’s trial was postponed.

Next up was Manning.

But his lawyer was unwell. Chapman stood for the first time that day and explained to the judge that Michie, the ill lawyer, had sent him copies of Manning’s file, because no one had expected Manning to be called on today. As Chapman was not too familiar with the case, he asked that Manning’s trial be postponed. At this the hue of A’Beckett’s face grew several shades purpler. But he washed his hands of it all, and told Chapman to ask the Attorney General.

Calmly, patiently, in his beautifully modulated voice Chapman replied that there were "two or three cases in which the witnesses are all present and waiting, if the Attorney General will only be courteous to us."

'Not my department,' implied the shrugging judge, waiting for Stawell to respond.

Granting courtesies seemed unfamiliar to the Attorney General, so he dug his heels in, refusing to allow Manning to postpone his trial too easily. Clearly not interested in cooperation Stawell pressed the unflappable Chapman, asking if he had been retained to represent Manning.

No, Chapman informed him, his was only a watching brief for the sick barrister.

Was, then, Mr. Michie Manning's only Counsel?

"No," Chapman conceded, "Mr. Dunne is with him."

Dunne was no pushover. "I would put it to the Attorney General whether in a trial of this great importance he should force me to proceed alone?"

In a sulky tone of voice Stawell asked for a delay to search for the sick Michie. Chapman immediately interjected that he had received a note from Mrs. Mitchie that morning, but that he had unfortunately mislaid the note in his papers.

Like it or not, the judge had to believe him. Stawell was brought to heel by the Chief Justice's curt, "I do not like to adjourn the Court on an uncertainty; it will be a source of great inconvenience!"

But what about me? I was next in line. Although I had been given all the information which I as a layman would need to be able to follow the events I have just described with any comprehension, and as things had gone almost word for word as Grant had predicted, I was still about to be put on trial for my life. I did know that for some reason these lawyers wanted me to be tried before the other twelve. I had been given precise instructions on how to act and what to say and although my Counsel seemed to grow more optimistic about my chances of acquittal, I felt distinctly sick to my stomach to be the first lamb to be sent to the shearer. But the choice was not mine.

"Very well then," piped the Attorney General, "we will proceed with the trial of Joseph."

## CHAPTER THIRTY NINE

The Queen versus John Joseph trial commenced with the high farce of jury selection.

We let a gentleman and a saddler through, then I rejected some potential jurors, then the Crown did the same. A liquor merchant slipped through before still others offended me, but I relented at a late stage to permit a stone mason, a butcher, and a carpenter participate.

By this stage of the proceedings I knew my audience, and I played up to them well, I think. I sought never to look rebellious, aggressive, or nasty, always playing a confused man, not quite sure if he were about to be cuffed by a displeased official. Grinning nervously, shuffling my feet, scratching my head, never speaking clearly, I tried to play my role as convincingly as I could, for I knew that my life might depend on this one performance.

Continuing my challenges, like some poor fool enjoying a brief taste of power, I sent a few more hopefuls packing, and continued to do so to anyone who impressed me as being at all susceptible to officialdom, or who was himself an office holder of any kind. Grant had impressed on me my right to challenge anyone I didn't wish to trust my life to, anyone who slipped through the safety net of my Counsels' challenges. As I had been warned by Grant that it was unlikely that I should be called as a witness, thus exposing me to Crown cross-examination, I knew I must take every opportunity to impress on the Court, and particularly the jury, what type of person I was. So on every occasion I sought to look brave, but pitiful and confused.

Each of my challenges seemed to heighten the emblazoned face of Stawell, and at the point of several challenges I actually made my demonstration of long and deliberate thought, before bobbing my head in a craven way to the juror I had just passed, then to Stawell, then the judge, then the Clerk of the Court, then the gaoler in turn. I allowed a few more citizens to dribble through, but then, no, some standards had to be maintained,

and the challenges started all over again. In a rush I allowed some more victuallers, householders, and a coffee roaster.

As soon as I laid eyes on George Armstong, however, I knew that he would not do, so what could I do but challenge?

Like a child having a tantrum the Attorney General looked contemptuously at me, then with loathing at my Counsel, before actually stamping his feet and clenching his fists. His eyes seemed to search the ceiling for some malevolent deity to open up the floor and swallow us up. When this failed to happen, he then turned to appeal to the Chief Justice.

“May it please your Honour, I wish to take the opinion of the Court as to whether the prisoner is entitled to more than twenty preemptory challenges. He has already exhausted twenty. This is now the twenty-first.”

“It is the twenty-third, according to my note,” observed the Chief Justice caustically.

Seeking to appear a very stupid man, I found it difficult not to appear smug. Aspinall had himself instructed me on how to appear. No doubt hoping to lend weight to my confusion no explanation had been given to me, other than, “Mr. Attorney General is under the misapprehension that we will not whole-heartedly oppose this show trial, because he thinks that as the Governor’s favourite, he is entitled to lay down the law, or his interpretation of the law unopposed. In that he is mistaken, and no less a person than you shall reveal for all the world to see what a foolish martinet he is. Just like his military master, the good Captain Hotham!” Though disappointed that I was likely to remain silent and allow my defence team to speak for me, I was more than willing to follow their advice, especially as my life was at stake.

I was as surprised as most everyone else in the court when Chapman rose and made the simple point, “The objection is to this juror.”

Stawell didn’t seem to understand my Counsel’s point, so he attempted to cover his confusion by repeating what Chapman had said. As he did this he grimaced rather than smiled, he rubbed his hands together as though a winter wind blew through the summer court. Then he resorted to his legal jargon, and claimed that no one “arraigned for murder

or other felony” could make more than twenty challenges. As this man I disliked so much grew very angry, I realised that I hated him most for his petty, bureaucratic personality. The more furious he became, his voice became almost falsetto, and he seemed to chant his legal breviary like a chirping chorister.

Chapman seemed to anticipate this behaviour, and using his right to argue in court, proceeded to lecture Stawell as he might a first year student of the law about my right in common-law to challenge. Holding up his right hand, he began his humiliation. “The usual classification of offenses is into treason.” Here he folded his right index finger into the palm of his hand, “Treason,” the second finger followed the first relentlessly, “felonies,” the middle finger descended, “and misdemeanors.” Here the right ring finger struck. “Now,” said Chapman, warming to his task, “Treason is felony and something more, and is a higher offence than a misdemeanor.”

Chapman’s instruction infuriated the Chief Justice. “I do not think I need to hear you upon that point, Mr. Chapman.” Squirming, Stawell weakly attempted to argue that the right to challenge more than twenty jurors was not granted under common-law. As neither the judge nor Chapman even bothered to reply, and as my challenge was granted, I felt vindicated. But now, I reminded myself, was no time to get cocky, yet I nevertheless took my time scrutinising the next juror. This candidate was an inoffensive bookseller, so I made no further challenge, and, as the jury was now comprised of my twelve peers, it was finally sworn in.

I considered that we had come out well ahead in these legal skirmishes so far, but I was now filled with dread about the damning things the prosecution was likely to say about me. The scenes of soldiers and guards openly pointing at me, and identifying me as I lay in my cell in Ballarat flashed through my memory. Would they bring out the fact that by some I might be considered a runaway slave? As I thought about such threats, I started to descend into those dark thoughts that had concerned me since my arrest. Depressed, I waited for Stawell to begin his onslaught of personal vilification against me. I was surprised, though, that in an inaudible, uncertain murmur he charged that I and others had committed ‘heinous’ crimes against the Queen, and had painstakingly conspired against

Her Majesty to deprive her of her lands and possessions, sheep and cattle. But I actually seemed to be missing from the picture. His heart didn't seem to be in describing in detail such horrific state crimes which I had actually committed against the Queen, though he ploughed on and on, in very general terms, through the details of the various meetings of the mass of disgruntled diggers at Ballarat.

I was disappointed that Chapman allowed this diatribe to go on unchallenged. It was at this stage that I began to wish that I had a more aggressive attorney. All of my lawyers sat silently letting the opportunities pass, until it was too late and the first witness was called.

The doors of the court were then thrown open and I heard the clerk shout several times in the gallery outside the courtroom "Trooper Goodenough." As several calls were required there was a murmur of laughter around the courtroom audience at this unusual family name. This conversation was suddenly halted by the crashing of heavy boots on the marble floor of the antechamber. Suddenly, the immaculately uniformed figure of the trooper marched erectly through the open doors into the astonished courtroom. As the doors closed silently behind him this automaton marched to the witness box, stamping his heavy military footwear onto the beautifully polished floorboards. Up the steps of the box he went, before halting and stamping both feet until he stood at attention while repeating the words of the oath read to him by the clerk. Only then did he carefully remove the black pill-box hat, take off his gleaming white gloves and stand at ease.

I had never seen this man before, nor had I ever seen such a splendid outfit, which I supposed replaced the usual slovenly kit of a trooper with the scarlet coated, dazzling white belt of his dress uniform. It certainly impressed me, as it seemed to astonish the judge. Then, as I looked at his face more closely, I recalled that he had been pointing at me, and apparently discussing me at what seemed a lifetime before in Ballarat jail. This sudden recognition sent a pulse of fear and apprehension through my body.

Stawell started by asking details about the various protest meetings, which had been addressed by such digger leaders as Holyoake, Kennedy, Hayes, "and one or two others" – but no mention of John Joseph.

At last Chapman was provoked to stand up and, with a loud sigh, "ask my friend the Attorney General whether he is prepared to connect the prisoner at the bar with this portion of the evidence, because if not it is wholly irrelevant to the charge against the prisoner?" He followed this question with a lengthy argument which specified me. Then, again conveying a lecturer discussing the thinking of a wayward student, more in sorrow than anger, he pressed home the point that the Attorney General had not even attempted to connect me to either his opening statement or in his questions to Goodenough, "all that is totally irrelevant to the case against the prisoner."

Naturally Stawell referred to many legal precedents legitimising his handling of my prosecution, and it was in his ruling against Chapman that the Chief Justice again demonstrated his bias against me in permitting to continue this totally immaterial line of questioning prosecution witnesses by the Attorney General. The Judge not only ruled against us, but he joined in the questioning of this very shifty looking witness about Lalor.

The delighted Stawell then sought information about the flag that poor old Eddie had died defending, and then produced it as evidence, asking Goodenough to identify it. But the trooper replied that he knew that the flag was blue with a white cross, but could not swear that the one produced in evidence was actually it.

While this was going on my spirit and hope were draining away. I saw myself as confronted by a prosecutor out to hang me, assisted by an unashamedly biased judge, and at that point I remembered the court in San Francisco, and how I had rejoiced at truly unbiased judgments of Judge Morrison. But at least I was having my day in court, and at many points in this evidence I had to restrain myself from jumping to my feet and calling this witness a liar. Then I remembered how Father Lucien had taught me how to just let things go, and where there was blackness to enter into it, and search for God who was supposed to shine there. He didn't seem to be anywhere around on that day.

Meanwhile Goodenough was asked to describe everything he could remember about the flag, its pole, how many people were there, what arms they carried. But my name he never once mentioned. Chapman rose and reminded A'Beckett that the

previous objection that he had raised would continue to apply “up to the time of connecting the evidence to the prisoner.”

The Chief Justice grunted his understanding. Uninterrupted the trooper ploughed on, describing meeting after meeting, and how Lalor led about five hundred diggers to swear “to defend each other and fight for their rights and liberties”. Evidence was given about other prisoners to be tried with me, such as Raffaello and Lalor, how they were armed, and how many men they led. And still never a mention of me.

Finally, it was Chapman's turn to cross examine Goodenough. He set about his questioning in far too friendly a fashion for my liking.

Beginning with the meetings, he simply followed the same line of questions as Stawell, who slouched on his bench with a self-satisfied smirk on his face.

“How many people were there?”

“I should say about 1500.”

“What means did you take to ascertain the number?”

“I only gave a rough guess.”

Chapman asked about the construction of the platform, and whether speakers addressed the meeting from it. Then, like a thief in the night, came a series of questions from Chapman that nearly brought me to my feet shouting for joy.

“Was anything said about licenses?”

“There was something, but I could not recollect the words that were spoken.”

“Could you hear what was said?”

“I could hear it, but I did not attend to it.”

“How were you dressed at the time?”

“I was dressed as a digger.”

“By whose orders did you go there?”

“By the orders of sub-inspector Mr. McCulloch.”

“Did he order you to strip off your uniform?”

“He did.”

“And you went as a digger?”



“Yes.”

“Do you swear that you heard nothing about licenses then?”

“I could not repeat the words; there was something spoken about licenses.”

“What was it?”

“I couldn't say.”

“What was its nature?”

“I could not say what it was.”

“You say you heard Lalor tell the people to stand up for their rights and liberties?”

“No, I am not speaking of Lalor; I did not hear Lalor speak then, it was Hayes I heard speak those words.”

“I took it down, 'The meeting then called for volunteers. Lalor called for men to come forward to stand up for their rights and liberties?'”

“This was after Hayes.”

By this time Goodenough seemed to be floundering, and his replies were accompanied by many glances toward Stawell for assistance, but none came.

Chapman mildly made the point. “I am reminding you of what you said. What else did Lalor say?”

“He called for volunteers.”

“What else did he say?”

“He called for other men to go and look for firearms.”

“Did he say anything about licenses?”

“Not that I recollect; I could not state the words.”

“What else did you hear him say besides calling for volunteers?”

“I cannot recollect anything.”

“How long did he speak?”

“He was there for an hour, but he did not talk all the time.”

“How long was he talking?”

“He was talking for about ten minutes, but I was not near enough to hear every word he said.”

"But you did hear him say 'Men, come forward and stand up for your rights and liberties?'"

"I did."

"Was that all you could hear him say out of ten minutes speaking?"

"That is all I can swear to."

"And you swear that you never heard him say anything about licenses?"

"I could not state what he said about licenses."

I felt that Chapman had done well to show this man to have a very selective memory, and I prayed that the jury agreed with me. I anticipated that Chapman would leave the questioning there, but he did not let Goodenough slip through on even the irrelevant evidence against me. I turned my full attention to the questions he was asking.

First, my Counsel went over the evidence about the flag, and forced the trooper to reiterate his inability to identify the one produced as evidence, although the witness maintained that the miners' flag had been similar to it. Chapman then drew out of Goodenough the admission that it was common to find flags of all shapes, sizes and designs flying over stores and other commercial properties at the diggings. Therefore, Chapman pressed, "It is not a wonderful thing to see a flag flying at the diggings?"

"No" was the reluctant reply. Chapman pursued his now desperate quarry by asking him how many flags he had seen at the diggings, and the trooper thought up to two hundred - then said that none of those had a star in the middle. So, then, the lawyer proposed, the only flag with mischief was one with a star in the middle? Well, no, but a flag with a star in the middle was never seen over a store by the trooper. These clearly evasive and misleading replies not only cast some doubt on the truthfulness of the witness but were causing open mirth in the public gallery. What surprised me was that this particular judge did nothing to stop it.

By more skilful questions about what Goodenought thought "rights and liberties" were, my Counsel forced him to admit that it was all about abolishing the license fee. Chapman merely looked from the witness-box to the jury several times, and raised his eyebrows in a gesture which I interpreted to convey disbelief in anything this witness said.

Then, just to make this point, the lawyer once again canvassed the trooper's evidence about the size of the crowds. Then he made Goodenough admit that there were a lot of firearms on the diggings. How then did the men whom the witness spied upon drill?

"Like soldiers."

Once again they went through the evidence about Lalor. What actually did he say when he called for volunteers? At other meetings Lalor was accused by Goodenough of having spoken for up to two hours.

"Cannot you tell us something else he said?"

"No; that is all I can recollect."

"When these men knelt down, and professed to stand up for their rights and liberties, how far were you from them?"

"I was with them." The trooper then agreed that he was mingling with the men about ten yards from the platform.

"How is it that you heard nothing else; the sentences that you have told us would not take two minutes to utter?"

"The greatest part of the time he was calling for volunteers." Goodenough insisted on this point, even though he "could not recall" what Lalor had said about licenses or any other part of his speech to the assembled miners.

Relentlessly Chapman returned to the question of the clothes worn by the trooper when he attended the diggers' meetings.

"What dress were you in then?"

"In the same dress."

"As a digger?"

"As a digger."

"What was the occasion of their dispersing on that morning?"

"The soldiers and the police came up, and they all ran away."

"Did you run with them?"

"I did run among them."

"As if you were one of them?"

“Yes.”

“And in fact you pretended to be a digger?”

“I did.”

“Did you talk with any of the persons present?”

“With some of them.”

“What did you say to them?”

“We were talking of the political affairs.”

“Tell us what you said; give us your notion of political affairs?”

“Concerning the meeting and the diggers.” The now less-starched and sweat-drenched trooper spoke evasively. But Chapman refused to let him avoid answering his questions.

“What did you say?”

“There were several of us together, and one asked one’s opinion, and another another’s; one was for petitioning the Governor, and another for taking up arms.”

“What were you for on that occasion?”

“I was for petitioning.”

“Did you say that you would stick up for the rights and liberties of the subject?”

“I did.”

Now came the telling question. “In fact, by your whole demeanour, you intended to make them believe that you were one of them?” A very long silence followed before Goodenough blurted out, “They might have believed I was a digger; I do not know whether they did or no.”

I was amazed that Chapman did not follow this up further, and felt we had missed our chance, for he then returned to questions about meeting times and details about the flag.

By the time he was permitted to leave the witness box the trooper seemed much less aggressive and far less certain of his evidence, and Stawell also seemed somewhat crestfallen. Nevertheless, I felt deflated because my Counsel had let him wriggle off the hook.

But perhaps things would get better for us, and maybe we had made some progress in saving my neck.

## CHAPTER FORTY

At the behest of the Clerk of the Court the immaculately uniformed figure of Trooper Andrew Peters swept into the witness box in the same fashion as his recently departed comrade Goodenough.

His evidence was also a carbon copy of that of his predecessor. That may have been the reason why he was questioned by the Solicitor General, Robert Molesworth, to add some variety to the proceedings. Molesworth seemed much more professional and ruthless than Stawell in his interrogations. The slight, unassuming and bespectacled man seemed much more at home and relaxed in the courtroom, and his more masculine tone of voice was a welcome relief from the high pitched whine of his colleague Stawell.

Peters stated that he had been at several meetings, but no, he had not seen me there. Then his evidence became more precise when he claimed that he had attended a meeting where men were drilling. Among those men he claimed to have seen me armed and drilling with other diggers on the Thursday and Friday before the Eureka battle. Furthermore, he asserted that I had been in a contingent commanded by Raffaello Carboni. He had not, he claimed, seen any more of me after Friday.

As Chapman rose to cross examine Peters, it occurred to me that these people, dressed so respectably in their dress uniforms, were willing to tell any lie about me to see me hang. The thought that government officials, police and soldiers were willing to commit perjury was chilling, for I had never been armed, nor had I drilled in the fashion described by Peters. I began to panic, then I remembered that I was there to put on an act, so I scratched my head and tried to look like a half-wit.

Chapman began rather more assertively than he had with Goodenough.

"Have you ever known this man before?"

"No."

"Are there many black men on the diggings?"

"There are some."

"Are you quite positive that this was the man you saw?"

“I am.”

“How far from him were you at the time?”

“About ten or fifteen yards.”

“How were you dressed at the time?”

“In private clothes.”

“Like a digger?”

“No, not exactly like a digger, like a storekeeper.”

“Who directed you to strip off your uniform?”

“My superior officer, Captain Evans.”

Several times Chapman asked Peters about other black men, and about his certainty that I was the black man he saw drilling with other armed men. He stuck to his evidence despite claiming to have only seen me on the two previous occasions he saw me bearing arms, and reported it to his superior officers at the time.

Chapman was able to wring from this witness the admission that there had been many troopers dressed in civilian clothes spying on the diggers.

At this time I was getting very tired, and put most of my remaining energy into acting up for the jury in the usual mad way.

Another uniformed soldier was called, and went through the same charade as his predecessors. Like them Patrick Lynott was a perjurer. At first I didn't pay much attention to his evidence, so busy was I scratching and fidgeting around.

He at least was not a police spy, for he was one of the soldiers who had attacked and overrun the Eureka Stockade in the early morning of Sunday, 3<sup>rd</sup>. December. 1854. He claimed that the attacking force were advancing towards the stockade when the defenders opened fire on them, first with a single rifle shot, then with a massive volley. Stawell asked him if he saw anyone inside the stockade whom he recognised.

“Yes, I saw the prisoner.”

Then I was astonished to hear him declare, “He had a double-barrelled gun, and he raised it and fired immediately; he was in the attitude of presenting it; he discharged it, and in the direction in which he fired I saw Captain Wise lying wounded.”

Now I could see where these men were headed, for it became clear to me that if they could not get me for depriving the Queen of Her Empire, they would get me for a murder which I had not committed, that of a Captain in Her Majesty's army. This made me angry, but worse I was petrified that they really would hang me. I was very relieved to see Chapman leap to his feet and address the judge.

"I would submit to Your Honour that this is merely matter of aggravation, because in a melee of this sort, where, as the witness has described, firing was taking place pretty sharply on either side, it would be utterly impossible to ascertain from which particular bullet Captain Wise unfortunately fell. I submit that it is not evidence in the matter; it is utterly impossible for any witness to know that." But this judge was so tame that he said nothing, and simply allowed Stawell to discharge the protest, and continue to question the witness, who claimed to have lost sight of me after I had fired the shot.

Chapman got little out of this man, whom I had never seen before. He made progress in jogging my memory, for out of the blue he asked Lynott, "Were there other black men about the camp there?"

"There were a good many black men."

That made me recall that Sam had drilled with a double-barrelled shotgun. Now I knew that I was in very serious trouble, and once again my hopes plummeted. Chapman worked away at the witness, who admitted that the army attacked the stockade at dawn, and that the shot had been fired from between 200 to 300 yards away. But by now I had lost all hope.

Sergeant Daniel Heggarty reenacted the burlesque of parading in full dress uniform through the court, and very impressive he was too, with three gold stripes on each scarlet arm. I was glad that his evidence was less damaging than Lynott's. Sergeant Heggarty gave evidence that he had seen me in the stockade, running away, with nothing in my hand.

Chapman was able to have this witness state that he was about 300 yards away from us when the firing began, and that he could not see the men firing from within our



stronghold. Even as the soldiers approached the stockade, this witness stated that he could not identify any of the men inside Eureka who were firing at them.

And so the witnesses came and went. Sub-Inspector of police, Mr. Charles Jeffries-Carter claimed he had seen me taken unarmed from the guard tent.

Then, at last, the judge adjourned the case until ten a.m. the following day.

I had a brief meeting with Aspinall before my trial resumed the following day. I hadn't slept at all the previous night, and was very downcast and pessimistic about my chances of acquittal. Aspinall was supremely confident. He said that he was sure that Chapman had made a very good case for us, and that he was certain that I would be freed by the weekend.

"I think you might be rather too optimistic there, for these people seem to want to pin a murder conviction on me as well as one for trying to take the Empire away from the Queen! But I tell you what - let's have a bet on it! If I am right, you pay for my burial in Father Lucien's graveyard, and if I lose, and walk away a free man, I'll buy and drink with you the best brandy that money can buy in Melbourne."

Since my first antagonistic meeting with the lawyer, I had discovered that he wasn't the pampered dandy whom I had instinctively disliked. There was no doubt in my mind that he was a very heavy drinker, but now when he consulted with me he neither smelt of liquor, nor of the heavy cologne with which he had first tried to conceal brandy fumes. When I reached the point of not noticing that obnoxious smell of the man, I began to admire his fine mind and ready wit. On this morning he accepted my bet with alacrity. So I cautioned him.

"Look, we are all going to hang, no matter what you do, or how hard you try. Perhaps it is a case of what Voltaire might call '*pour encourager les autres*'. If they are lucky, some of the Irish might get off, but not Carboni or me, foreign devils beyond the pale!" I turned away to hide the fear and depression which must have been obvious on my face.

He moved to my side, staring out of the barred window into the nothingness beyond.

"You could not be more wrong, because we are certain that no jury would convict you - any of you. The people on the jury are not fools, and even a fool could see that you are political prisoners being tried on trumped up political charges. But I'm glad you said what you just did, for I have just had a very good idea of how I'm going to use it to your advantage later. No matter what is said about you today, do not believe it is true. In my country there is a saying which children learn - 'sticks and stones may break my bones, but names will never hurt me!' What we'd like you to do is play your vital role of the fool, or perhaps I should say jester, mocking the jury, the judge, the prosecutors, right the way up to the monarch, just as the court-jesters once did to their very faces."

So the proceedings began at ten o'clock on the dot. I stared at the ceiling whistling soundlessly, while witness after witness was brought in to testify against me. Private Patrick O'Keefe, who was a soldier who attacked the stockade, swore that at a distance of about five or six yards he had seen me fire in the direction of Captain Wise. He said that he had not actually seen me taken prisoner, but that after firing the shotgun I took off for a tent, and that was the last he saw of me until he noticed me among the prisoners outside the stockade.

Chapman pressed him about there having been other blacks at Eureka, and O'Keefe said that he had not seen any. Then, reasonably, had he known me before that fateful Sunday morning? When he denied ever seeing me before, but continued to state that he was absolutely certain that it was I, Chapman asked if Captain Wise had been a particularly popular and revered officer and gentleman, and, though he was not in Wise's company, O'Keefe agreed. Chapman now probed this man's evidence for information about the time of day.

"What hour of the morning was it?"

"Between four and five o'clock."

"Was it in the grey of the morning?"

"No, there was plenty of light."

"Do you mean that it was broad daylight at that hour?"

"Yes, it was light enough to see any object at three or four hundred yards."

"Was the sun up?"

"No, it was not."

Private John Donnelly, gave essentially the same evidence, but it was slightly less damaging to my defence because he claimed to have seen me with the shotgun in my hand, but had not seen me fire it. This time Chapman simply resumed where he had left off with O'Keefe.

"You say you were fifty yards off?"

"Yes."

"What time of the morning was this?"

"About four o'clock."

"Was it broad daylight or break of day?"

"I could not say it was broad daylight."

"But at the time you could see this man?"

"Yes."

"Were you all fighting at the time?"

"We were."

"Had you ever seen this man before?"

"No."

"You never saw him around the diggings?"

"Not to my recollection."

"Do you mean to say that at that time, in the confusion of fighting, you could recognise one black man from another at fifty yards distance?"

"Yes, I think I could."

"Recollect this is a serious question, affecting the life of a fellow creature, though a different colour to yourself. Are you prepared to swear that this is the man?"

"I am."

Again, I felt glad that I was being tried in this country rather than the United States, but on the other hand I wasn't sure that Chapman had been prudent in asking the

last question, for the certainty with which it was answered would, I thought, work against me.

Sergeant James Harris was then called to the box, and, resplendent in full dress uniform, like the others he was sworn in. The Attorney General asked him many more questions about the size, shape, design of the flag. This witness also claimed to have arrived with the raiding party at Eureka at about four in the morning. Stawell then tried to undo any damage that Chapman might have done with the testimony of Donnelly.

"Day was just breaking?"

"Yes."

"When you got to the stockade itself was it daylight?"

"It was scarcely light; it was light enough to see what we were doing."

"When you got into the stockade was it light then?"

"Yes."

"Then it became light all of a sudden?"

"No, a few minutes elapsed. Ten minutes at the break of day makes a great deal of difference."

Once again, Stawell began to make himself look like a fool - or like a man privileged never to have to work in the dark. Then the Attorney General asked if Harris had seen me at the stockade. After the witness replied "Yes", he was asked if he was certain I was the man, but replied in a more hesitant manner, "Certain; sure."

"What was he doing?"

"I saw him in the stockade with his firearms between two tents; I did not see him fire."

Chapman took Harris over the same ground, and I was becoming increasingly impatient to get the whole thing over, and have the bastards hang me, for I knew that was what they were going to do. Harris denied ever having seen flags flying at Ballarat.

With one eyebrow raised, Chapman seemed mystified. "But you have seen many flags hoisted: it is a common practice, is it not, to hoist flags?"

"It appears very much like it. There are plenty of flags flying about, but not such a flag as that. That is a very remarkable flag."

"Before you got into the stockade you say it was only the grey of the morning?"

"Break of day."

"How far could you see distinctly so as to recognise a person?"

"It was about four o'clock." Chapman let him evade the question, but he allowed a long pause before continuing his questioning, during which he looked at each and every juror, and I think very successfully made his point.

"When the troops were fifty yards from the stockade, could you see faces distinctly at fifty yards; could you recognise a person at that distance?"

"Yes; if I saw a person once I should know him again."

"When you were marching up to the stockade could you have known a man at fifty yards distance; when you were fifty yards distant from the stockade was there light enough to see individuals and recognise them?"

"There was; but they were not bold enough to show their faces at that distance." One more nail in the coffin of this witness's credibility, I thought.

"It was afterwards you saw them?"

"Yes, they were rather shy, and kept their faces on one side."

Now the prosecution called on its really important witness: Commissioner Gilbert Amos, Lord of the Eureka Camp, was next called to give evidence.

This official gave general evidence about the stockade, and referred to a map, which Chapman objected to, since Stawell had not had the map verified according to the rules of evidence. Once again, the Chief Justice ruled against us. The Commissioner told a long story about how, on Saturday morning, 2<sup>nd</sup>. December 1854, he was made prisoner by about one hundred diggers, who had invaded his camp. The Chief Justice became so interested in the tale that he started asking questions in juxtaposition to Stawell. After a long recitation, Chapman stood, and shrugging his shoulders in an apologetic way, rather as if to express sorrow for interrupting an informal conversation, did just that.

"I would really ask if your Honour is of the opinion that these transactions relative to the capture of the Commissioner which appear to be separate altogether from the rest, are evidence against this prisoner under the present indictment?"

Stawell jumped angrily to his feet.

"I am to prove that Ross, who took Mr. Amos, was shot dead in the stockade with the prisoner on the very morning of the attack; that this was in the immediate vicinity of the stockade; that they went to the stockade and remained there, and the prisoner was found in the same identical stockade with Ross, who died."

"The witness has already said that Ross stole a horse; that may be evidence to connect this man with a charge of horse-stealing," said Chapman sarcastically as he pointed to me in the dock. I took the opportunity to smile benignly at the judge, then the jury, while scratching my head furiously. The Chief Justice, acting like a small boy caught with his hand in the cookie-jar, was not about to give any admission that he was biased.

His red-faced response to the cleverly disguised accusation of bias was abrupt, "It may or may not be worth little or nothing. It is impossible to exclude it in a case of this kind."

Chapman had the judge in a corner, and he made the most of it. "Perhaps your Honour will take note of my objection, and take care in charging the jury, if you think proper, to exclude it."

The hypocrisy of these men maintaining their charade of politeness was astounding to me. I wondered if the jurors shared my disdain for it. Their verbal fencing continued.

The Chief Justice almost snarled, "I am quite aware of your objection. I am taking it for granted that your objection overrides the whole so far as it does not apparently connect the prisoner."

Chapman did not gracefully nod on this occasion, as he had so many times in the past two days. "So far as it relates to transactions apparently disconnected with the transaction with which he is supposed to be connected."

The portly, self-important Amos continued his evidence of how bravely he had acted when taken prisoner by Ross's band of diggers, and narrated his brave deeds at great length without even waiting for Stawell to continue questioning him.

When Chapman came to question Amos, he began by asking him in what capacity he had gone to the stockade, and the pugnacious witness asserted that he had gone there both as a magistrate and a Commissioner. He admitted that he had gone there bearing arms. Then Chapman began to lead this over confident man down a path he had clearly not expected.

"Do you know a person by the name of McGill?"

"I do not."

"You have heard, I suppose, mention about the name of General McGill, have you not?"

"I have not."

"Have you ever heard of a body of men called 'The Rangers'?"

"I have not."

My attorney switched to questions about the license hunts. Then he moved to the days immediately before the erection of the stockade.

"Previously to the Thursday had there been any disturbances?"

"On the Wednesday there had been the firing off of arms and burning licenses, showing an evident intention on their part to resist the government license tax."

"Did you see the licenses on the Wednesday?" Chapman's innocent question brought out the confident reply, "I saw the smoke from the fire of the licenses that were burnt."

"Is there anything particular in the smoke of a license?"

Amos blustered, "I do not know that there is anything in the smoke of one; in the smoke of many there may well be." The red hue of his face revealed that perhaps even such a great man as he knew his answer to be ridiculous. Chapman pursued him regarding the operation and frequency of license hunts, and eventually Stawell stood to accuse my Counsel of wasting time: this caused the judge to ask him what was the

relevance of questions about license hunts on the proceedings. I thought this again revealed bias, given the Chief Justice's leniency towards Stawell with respect to most of his interrogations of his witnesses.

Chapman was more than ready for this question from the judge.

"Simply, your Honour, that the whole matter arose out of what was commonly called license hunting. That was the beginning of it. The beginning was a meeting for the purpose of considering the license system, as, I contend, a lawful meeting, and then a large number of troopers are sent out to hunt for licenses, and upon this a state of discontent arises, which, as in many cases of discontent, eventually breaks into a riot and disturbance."

At this point I was a little relieved that I noticed two of the jurors nodding in agreement with this point, and I also heard a hint of a murmur from the public gallery. I paid more careful attention to what Chapman was saying, and tried to imagine its impact on the court.

"My learned friend has given evidence of circumstances that occurred before the prisoner at the bar was connected with these transactions at all, and I claim the right of going a little further back. In fact, I am not going one atom further back than the case of my learned friend. I show first of all that this commences with a lawful meeting. It is true that my friend may ask for a certain inference to be drawn from the words, 'Bring your licenses with you; they may be wanted,' but here is a lawful meeting."

For once the Chief Justice paused to think before sidling against us, rather shiftily he looked around his court, before ruling, "I will not interfere with you, Mr. Chapman; you can take the evidence and make your argument afterwards." Was he being generous, or was he recalling that the transcript of the trial would be reviewed in London, probably long after I had been executed. I wondered if judges in faraway colonies like Victoria thought of such things.

Chapman probed the witness for a time that the raiding party had left the government camp on Sunday morning, and was told about three in the morning. What, he then asked, was the state of the light when the firing took aim. The answer was evasive but slick, that the light was sufficient for the soldiers to take aim. Since he was there,



Chapman wondered aloud, did any of the soldiers fall at that point. Still the equivocation continued in Amos's reply.

"I did not see whether any of them fell; I was about sixty yards from the stockade; I was not with the troops that were fired at."

"Were the troops more distant than you or nearer?"

"There was a hill between me and the stockade, and the troops were waiting until we got around."

"How far could you distinguish at that time where you were?"

"I could distinguish all that was going on."

"Could you see faces at a distance?"

"At that distance it might be rather difficult to remember a face. I could see every action, and two minutes afterwards it was a very different thing. We were advancing and getting near the place, and the daylight was coming on too, so that there would be no difficulty in recognizing faces then."

"How long was it before you got to the stockade?"

"Two or three minutes, not more."

"Were you in the stockade before it was taken?"

"I was."

"Did firing go on then?"

"It was very difficult to say whether firing was going on. I believe not."

"Can you or can you not say whether firing continued after the troops got into the stockade?"

"I should say decidedly not."

Here the judge interrupted to ask a question, "Were you present so as to give an account of what took place immediately after the soldiers got into the stockade?" Chapman gave the witness no opportunity to reply, but without batting an eyelid continued his interrogation.

"I think you said that you were within the stockade at the time?"

"I was within the stockade after it was taken, but not two minutes after it was taken. I was in a quarter of an hour after it was taken, so I am not able to give an opinion whether the firing ceased in the stockade when it was taken or not; but even when I came, a quarter of an hour afterwards, there was this scattered fire going on."

This last answer by Amos seemed to me to be misleading, and to contradict his previous evidence. Yet once more I felt that Chapman did not press him on which points in his evidence were incorrect. Chapman appeared satisfied, and changed the subject of his questions, again disheartening me.

"How long have you been with the Gold Commission?" My Counsel asked this question in a politely inquisitive manner, as one might a stranger encountered at a social gathering. "About two years," answered the witness, who seemed to have recovered all of his previous bravado.

"Were you in other employ before?"

"I have been in the army."

This was clearly not what Chapman had in mind. "Had you ever been in employ under this government before?"

"No, never."

"Under the Sydney Government?"

"Under the Sydney Government I was."

Amos seemed reluctant to disclose any further information unless pressed. He paused for a few seconds, clearing taking time to think, then corrected his answer. "No, I was not under the Sydney Government."

Chapman, urbane as ever, almost purred his next question. "Were you ever connected with the Private Escort Company between the Ovens and Sydney?"

"I commanded that Company," a now embarrassed Amos confessed.

"What was your reason for leaving it?"

"A disagreement between myself and the directors of the company."

"What was that about?"

"It was a long time ago. The correspondence is in the Colonial Secretary's Office."

It seemed to me that Chapman was chipping away at the selective memory of the man. To imply that the details of a disagreement resulting in the loss of a senior position which took place two years prior had escaped his memory was beyond credibility.

"How did the correspondence get into the Colonial Office here, if it was a Private Escort Company?"

"I left it in a lawyer's hands there when I left. They owed me some back pay, which I have never got yet."

"How should the correspondence respecting your employment in a private company get into the Colonial Secretary's Office here?" Chapman repeated his question, while Amos looked around the court as though seeking Divine inspiration.

No longer the confident senior official, this man appeared to me to be shifty and evasive, and my lawyer's intent of attacking the reputation of this Gold Commissioner by his skilful questioning made me feel guilty for having doubted him just a few moments before.

Amos again hesitated, and began his answer with a number of excuses. "There are several technicalities about the affair. I will get hold of the correspondence if you wish." His sentences seemed to be getting more succinct, and with each one he became shorter of breath as his face grew more florid. "I can explain the greater part of it. There were some arrangements about some horses or one thing and another I had to buy. I had unlimited credit to draw to the amount of ten thousand pounds for the purpose of forwarding the affairs of the escort. And I bought a horse for which I paid forty-five pounds. And three days afterwards it was stolen, and they refused to give me £45 of my salary until I had found the horse again which I had nothing to do with. And I put it into a lawyer's hands; but there was some difficulty in proceeding against them, and I resigned their service. And came over here."

I wondered how many diggers such as I in that courtroom believed this man, who told such an unconvincing story. Everyone in the Colony of Victoria knew about

disgraced corrupt officials such as D'Ewes, magistrate and business associate of Bentley. Every digger had seen men like Amos act as demigods demanding licences and fining diggers for trivial offenses, men who lived and paraded like monarchs on the proceeds of stolen horses and trumped up charges. I for one had no sympathy for him, for he would willingly give evidence, false evidence, about when he had been in the stockade, and what had really happened there.

Chapman apparently felt much the same as I, "Were you dismissed from the Escort Company?"

"I was not dismissed from the Escort Company." Chapman's coup de grace was delivered deftly and simply.

"Will you swear that you were not dismissed?"

Amos's reply was awkward and dubious. "I will swear I was not dismissed, I resigned."

But in my experience, a man in a position in which he may administer a line of credit up to ten thousand pounds would never resign willingly over a matter of principle concerning the price of a nag.

Chapman sat down looking victorious, but Stawell was on his feet in a flash. Resuming his questioning of Amos, the Attorney General led his witness to say that the correspondence with the Escort Company had been furnished to his present employers to ensure that Amos had not acted illegally. Then Stawell shifted ground.

"Have you heard of a man by the name of McGill?"

"I have heard of a man by the name of McGill, but not General McGill."

There was an audible gasp in the courtroom.

"Have you heard of a man by the name of McGill who is said to be connected to these rioters?"

"I have."

"Do you believe that the man referred to as 'Colonel' was McGill?"

"I rather thought it was not McGill, but from what is stated I think it must have been McGill."

"Have you ever seen this man since?"

"No."

"Did you ever see him before?"

"No."

"Do you know that he is residing on the gold fields?"

"I had heard previously that he was there."

An outraged Chapman was on his feet immediately.

"The witness has said that he never heard of McGill!"

"I said I never heard of General McGill; I had my suspicions." The humiliated Amos waited with downcast eyes for further questions, but my lawyer made a magnificent display of contempt for the man before resuming his seat and allowing the mortified Gold Commissioner to shuffle from the witness box.

It was at this point I gave up, losing any interest in hearing more lies from the government witnesses. I had become so bored, disgusted and depressed with the entire charade that I sank once again into that familiar gloomy darkness. I remember a police magistrate and some other official giving their perjured stories, but I was too busy grinning insanely around the court, from judge, to lawyers, to clerks, to jurymen.

I kept my mind busy trying to calculate the length of time it would take a man of my stature and weight to die at the end of a hangman's rope.

## CHAPTER FORTY ONE

I woke from this despair when the name of the next witness, Thomas Allen, echoed around the court. I had never heard the name before, and as I waited speculated in my mind about the type of uniform he would be wearing, and if he would do us the honour of the full dress parade, and if I should parody for the jury the placement of cotton-wool in my ears, to protect my ear-drums from the noise of stamping boots. I decided not to go that far; after all, I just wanted to act dumb.

When Mr. Allen appeared, he was not at all as I expected.

He was a shabbily dressed, stooped, wizened, white haired man who limped his way cautiously to the witness stand, where he read the oath from the card given to him by the clerk. A chair was brought and this witness gingerly lowered himself into it, settling in with an enormous sigh. The Solicitor General, Mr. Molesworth, rose to begin questioning him.

“What is your Christian name?”

The whole room waited for the answer: ‘Thomas’. Instead he surprised us all with his hesitant reply, “Yes, that is the prisoner.” Most of the people there looked around in a confused way, to see if somehow they had misheard the question or the answer. I saw Chapman and Aspinall exchange glances, and the latter clearly had a problem controlling his hilarity.

Molesworth made another attempt.

“What is your name?”

A more confident Allen replied, “No; I have no pension at all; you see, I am rather deaf.”

By now most of the jury as well as Counsel and members of the public gallery were openly laughing. A furious Chief Justice banged his gavel, but not one person would or could control himself. Even the serious Molesworth was unable to suppress a broad grin. It may have been that we all needed some relief from the sheer tedium of legal jargon and false piety. Furthermore, I found it so exhausting trying to sift through the false

testimony offered by evasive witnesses that the words of poor Thomas Allen swept through the court like a cool change. Anyway, etched forever in my memory like a scene from *The Inferno* is the sight of the demented judge pounding furiously with his gavel while no one in his court paid him any attention or even heard his banging.

Part of my joy was the sure knowledge that Molesworth had from the scene before him that if he were ever to extract any useful evidence from this pitiful old man, he was going to have to play the straight man. This he valiantly attempted to do, displaying a face scarlet with either embarrassment or suppressed mirth. His predicament made his performance the funnier for me, and I could do nothing but look down at my hands, in the knowledge that my shaking shoulders could be seen by all: for once I felt that I did not have to play the fool.

The Solicitor General bellowed, "Have you a store at Eureka?"

Like many deaf people the witness shouted his reply to this first question that he had heard correctly. "I kept the Waterloo Coffee House and Store on the Eureka."

"As you are deaf, will you state what you know in your own way?"

Allen explained that he had arrived back to Eureka from a marketing trip to Melbourne on the Saturday that the stockade was erected. He recounted how the whole bulwark had been constructed in about four hours during the Saturday afternoon. It had simply been haphazardly thrown up around the tents which were already there, and the Waterloo Coffee House and Store unfortunately happened to be within that area. He proudly revealed that the other diggers knew him by the nickname of 'Old Waterloo'. He did not claim that the diggers physically harmed him, but stated that he had been under loose custody in his tent following his return from Melbourne.

"Where was your tent?"

"It was the second tent stockaded around, next to the butcher's shop. All my property was destroyed to the amount of £200. Everything I had was destroyed." At this point the poor old man was reduced to tears.

Molesworth must have believed that he could lay the blame for the unfortunate Allen's loss on me, for he immediately bellowed, "How was your property destroyed?"

“I believe it was set on fire by the police, with all the other tents in the stockade.”

Clearly the Solicitor General was disappointed, and quickly sat down.

It was now Chapman’s turn to try to maintain some dignity while he cried out his questions to ‘Old Waterloo’. “When was your property destroyed?”

No doubt hoping for a more sympathetic hearing from the defence the old soldier continued his litany of complaint. “It was set on fire by the police, and all I had was destroyed, except eleven pounds ten shillings. That was all I made out of two hundred pounds.” Allen again broke down at this point of his evidence.

After giving the witness time to compose himself, my lawyer slowly turned and pointed to me. “Do you know this man?”

“I do not, I never saw him to my knowledge.”

Turning back to face him, Chapman shouted, “Were most of the tents up before the stockade was constructed?”

“The tents were all up before the stockade was constructed. The stockade was constructed in about three or four hours on the Saturday afternoon.”

As ‘Old Waterloo’ shuffled from the court I felt my spirits lift, for I felt that his evidence supported the complaints which the diggers had been making long before, as well as after the uprising at Eureka, about the corrupt and brutal police. Furthermore, the authorities had tried to portray the stockade as massive fortifications, within which a group of power hungry men had plotted to overthrow the Queen. As ‘Old Waterloo’ was to be the only independent witness for the prosecution, and as the others were either police spies or corrupt senior officials, I had high hopes that his evidence would be beneficial to me with the jury.

But Stawell tried to recover the ascendancy for before he closed the prosecution’s case he tried to implicate me with Raffaello by having the Italian brought into court to be identified by the spies Goodenough, Peters, Heggarty and Donnelly. More as a legal ploy than for any reason of substance, Chapman made each of the four police spies, after they had identified Raffaello, swear that they had not been present when I was searched shortly after my arrest. All denied it. In the case of Donnelly my lawyer made him also swear



that he had not discussed my case with his sergeant, nor had he been told what to say before he gave his evidence. Though there was no concrete evidence of perjury, Chapman spared no effort in casting doubt on the truth of these four men in particular.

By the time that all of this legal manoeuvring was over, I longed for some more light relief as had been provided by 'Old Waterloo', but legal arguments were not over yet. Chapman sparred with both the Attorney and Solicitor Generals as well as with the judge while making arcane legal objections about the wording of the indictments for which I was being tried. His main objection was that most of the statutes under which most of the counts against me were listed had been repealed many years ago in England. He maintained that all such laws had therefore been repealed throughout the Empire, for they had, in the wording of the repeal acts themselves, declared the previous legislation to be void both "within the United Kingdom or without".

The judge would not hear of it, and resolutely set aside every argument my Counsel made. As the Chief Justice squinted at Chapman, his distaste for the lawyer was clear for everyone in the courtroom to see. He sarcastically asked Chapman "You rely on the words 'within or without'. Without what?"

My lawyer answered calmly, "It means all over the world".

The judge said nastily "But within what".

Chapman assumed a Napoleonic stance and, hand tucked inside his jacket lapel, spoke as the Professor of Law at the University of Melbourne. "It means within the United Kingdom or without."

Even I could understand that.

This madness must have continued for at least half an hour, and most of us seemed bored except the lawyers, led by the wilfully obtuse Chief Justice.

Once again my attention began to wander, and I tried to keep the jury amused by what I considered to be a rakish mime. The legal fraternity were so engrossed by poring over minute ancient wordings that no one in authority saw me blinking, scratching my head, as I portrayed a man hopefully mystified, confused, and out of his depth.

Suddenly the proceedings were adjourned to give Chapman time to draft the points to which he objected, in order that they could then be formally presented to the judge. Believe me, I enjoyed the quick wash and drink of cold water during that break.

After we returned to the court Chapman went through the travesty of formally presenting his objections, then stood to begin my defence.

## CHAPTER FORTY TWO

“May it please your Honour - Gentlemen of the Jury - It now becomes my duty, and a very anxious one, I assure you, it is, to address you upon the case which has been submitted to you by the law officers of the Crown, in order to charge the prisoner at the bar with the highest offence known to the law, namely, High Treason.”

The jury were paying very close attention to the confident style and mellifluous voice of my attorney, but I was annoyed that he had given credence to the prosecution's fictions by stating that he was anxious. After all, he should have taken the position that he was fully persuaded of my innocence, and therefore was confident that I should be found not guilty.

“Gentlemen, I agree entirely with the character given to the offence by my learned friend the Attorney General; there is in fact, no offence known to the law of so grave and serious a character as that with which the prisoner is now charged because this crime not only weakens the Queen's authority, but also carries awful consequences should any insurrection occur in any part of her dominions. Gentlemen, you are well aware that in this case a large number of Her Majesty's subjects have lost their lives. The loss of the troops has been considerable, and unfortunately, an officer of very high character, a gentleman of very great merit, has also lost his life, in consequence of these disturbances.”

Again I felt disappointed that he seemed to be making the prosecution's arguments for them; suddenly I was seized by a terrible fear that this man whom I had trusted with my life was going to let me down badly.

“It therefore becomes, gentlemen, more incumbent upon all persons who have any responsibility cast upon them during trials of this description, to divest their minds of the various circumstance which have come to their knowledge out of doors. I have full confidence that you will strictly and carefully exclude from your minds every impression that may have been established there previously to your entering that box, and that you will, so far as the case of the prisoner is concerned, entirely confine yourselves to the evidence which has been adduced before you.

“Gentlemen, these transactions are of a very peculiar nature; they come before you upon an indictment containing four distinct charges. The two first counts charge an actual levying of war; the two last counts do not charge an actual levying of war. but they charge that the prisoner compassed, imagined, and intended to levy war. Then besides the principal charge, there is a purpose named in those counts.

“In the first count the purpose named is to deprive Her Majesty of her royal title and authority over this Colony; and in the second count the purpose charged is to induce or compel Her Majesty to change her measures.

“Now I apprehend, gentlemen, that these intentions are none of them proved. I shall not dwell upon that for the present, but I shall go to the preliminary circumstances of levying war, and compassing to levy war, as against the prisoner at the bar. There was a great deal of evidence given by Goodenough in the first instance as to the general character of the meetings of the meetings of the three days from Thursday to the Saturday evening. Goodenough described the manner in which the meetings took place on the Bakery Hill, but he did not speak to having seen the prisoner there.”

I was surprised that I was now much calmer as I listened to Chapman’s summing up, for he started to lead his audience through the case against me with an impartial sobriety which just might convince the jury. So perhaps I shouldn’t worry so much.

“One of the important facts relied upon, gentlemen, was that a flag was hoisted. Now I must direct your attention to the nature of this flag, and to the common practice, of which you have had plenty of evidence, of hoisting flags at the diggings, and therefore I contend that no inference whatever can be deduced from that. One of the witnesses said ‘Oh, but it was a very peculiar kind of flag’ and therefore he inferred that this flag was evidence of a levying of war.

“Now, gentlemen, it so happens that I know this flag - it is the same kind of flag - and I believe that it may be the very flag, that was hoisted and produced when the Anti-Transportation League paid a visit - that is, the delegates from Van Diemen’s Land, paid a visit to this Colony, and if I mistake not my learned friend the Attorney General himself,

who was always (and I think it highly to his credit that he was so) an opponent of transportation of convicts to these Colonies, himself has acted under that very banner.”

There was a silence in the court as my lawyer allowed a very long pause in his presentation.

“Whether it be the very precise piece of bunting as that which was displayed on that occasion I cannot positively affirm, but it is so perfect a copy of the Anti-Transportation League flag that the two could hardly be told apart. In fact, the flag was intended to be a star and a representation of the Southern Cross. I must put this piece of physical evidence before your eyes, and ask you whether it was not the very flag, or precisely the very flag, that was hoisted here in the anti-transportation days; and if the fact of hoisting that be at all relied upon as evidence of an intention to depose Her Majesty, then I can only say that my learned friend and myself ought to be included in this indictment!”

Again, with the confidence of a raconteur, Chapmen paused to let barb find its mark.

“You have also general evidence about flags. It is the practice all over these Colonies, I don't care where, for auctioneers, shopkeepers, tradesmen, and merchants, to hoist flags at their stores; and it is a practice, as we have heard from the witnesses, which prevails to a far greater extent at the diggings, and especially at Ballarat, than in the larger towns. You are aware, gentlemen, that flags are hoisted at the tops of houses; and auction-rooms, and stores, and in all possible positions; it would not be permitted in many of the large towns of Europe, but here it is a common practice, and it is a much more conspicuous practice at the diggings; and I say, gentlemen, that no inference whatever can be drawn from the mere hoisting of a flag as to the intention of the parties, because one of the witnesses has said that two hundred flags were hoisted at the diggings; and if two hundred persons on the same spot choose to hoist their particular flag, what each means we are utterly unable to tell, and no general meaning as to hostility to the Government can be drawn from the simple fact that the diggers on that occasion hoisted a flag.

“It may have been that they hoisted a flag in the same spirit as we hoisted the anti-transportation flag because they did not like licenses. We hoisted that flag because it was

an indication that wherever it was hoisted the League was present, and the League was a body of men that intended to do everything lawfully in its power to get rid of transportation of convicts to these Colonies, and in like manner it might be that these men hoisted this flag to show that they would use every lawful means in their power to get rid of licenses, and that flag having been used for the purpose of an anti-transportation flag, has since been used as an anti-license flag; that is the inference I draw. I only throw it out to you because it is utterly impossible, in the multiplicity of flags that have been hoisted at the diggings, to draw an exact inference as to the hoisting of any one particular flag at one spot.

“We have it in evidence that they had a meeting on Wednesday. What was that called for? A placard has been produced to you, but can any treason be extracted from that placard? It was a public meeting to consider the expediency of licenses, and there was a determination to resist the law as to licenses.”

In his impartial manner and calm voice the professor took on the task of teaching us all some law.

“We may have a public meeting here, outside the Court house, to-morrow, to resist any law within certain limits; I do not say we are justified in taking up arms to resist, but we are justified in having a public meeting for the purpose of obtaining the repeal of a law which we believe to be injurious to us, and on that Wednesday there is no inference that can be possibly drawn from that placard that there was anything unlawful in that meeting.

“Some reliance is placed upon a few words that were put at the bottom of the placard, but what are they, ‘Bring your licenses, they may be wanted,’ and for what purpose? Suppose they did intend to bring their licenses to burn them, what effect would that have? It would be injuring themselves; it would have just the foolish effect, I may say, upon the license fee that I might produce by burning some of the notes of the Union Bank of Australia which I may happen to have in my pocket; it would be simply injurious to myself. As the law stood, supposing they did burn their licenses (and the evidence is very insufficient on that point), the fact would simply be that not having licenses to produce, they would be compelled by law to take them out again. So far as the hoisting of the flag

was concerned, it was hoisted on the Wednesday, and I think before the Wednesday, for one of the witnesses said he had seen it for a week, but at all events it was hoisted on the Wednesday; there was a meeting on the Wednesday for the purpose of getting rid of the license fee by representation to the Government, and I say that up to Wednesday night there was nothing unlawful in that meeting, although they did burn their licenses, which was an act injurious only to themselves.

“But where is the evidence that they did burn their licenses on that day? Nowhere at all; no man saw a single license put into the fire; one of the witnesses says he heard licenses called for, and he then saw some papers torn up; another of the witnesses says he did not see the licenses burnt but he saw smoke, and I asked him if there was anything peculiar in the smoke that led him to infer that it was the smoke of licenses, and he was foolish enough to say, ‘Yes, he thought there was.’

“Gentlemen, a witness who would say that, and tell you that because the smoke was unusual in quantity, therefore it must be the smoke of a quantity of paper, and that therefore he inferred it was licenses, and upon his inference ask you to say that this was burning licenses, shows an animus against the prisoner, which I shall point out to you presently other witnesses have manifested also.

“I say, therefore, that up to Wednesday it was a perfectly lawful meeting. What takes place next? If the authorities had done their duty carefully, firmly and discreetly, I have not the slightest doubt that the whole of the proceedings might have been stopped after that; if they had then arrested some of the ringleaders, or at all events, on the Thursday morning, if they had arrested some of the ringleaders, it would have put the whole matter to an end; and if they had had the discretion to remonstrate with these men, and point out to them the unlawful purposes which they seemed to them to be bent upon; if when they assembled in arms, and the magistrates had stepped forward and read the Riot Act, and explained the consequences of the acts they were committing, the whole of these proceedings would have been nipped in the bud, because there is that reverence for authority existing in the mind of almost every British subject which would have induced them to pause before they proceeded further; there is, in fact, what Carlyle terms a reverence for the constable's staff,

and if the authorities had pursued a wise and discreet course, coupled with firmness, the whole proceedings might have been stopped on Thursday, and we should have heard no more about it.

“Arrests had taken place in consequence of an outrage, and the men were brought up, legally convicted and punished according to law, and if the magistrate had exercised equal discretion on the Thursday the whole of this proceeding would have been stopped. But what was their conduct? Why in the midst of this they instituted a ‘digger hunt’ or ‘license hunt’; that is, they sent out a number of troopers; one of the witnesses says there may have been twelve, and he could not say but there might have been twenty; they sent out from twelve to twenty armed troopers seeking for these licenses, demanding them, and I believe making arrests as they pleased.”

The Chief Justice, no doubt noting that Chapman was doing far too well in spellbinding his audience interrupted bluntly, “There is no evidence of the troopers having made arrests.”

Chapman didn’t turn a hair at the unwarranted intrusion by the judge, not even acknowledging the interruption.

“At all events, gentlemen, there was what is generally called a license hunt or digger hunt.”

Here this biased judge again tried to disrupt the flow of Chapman’s reasoning; but in doing so simply revealed his own ignorance. “I do not know what a ‘license hunt’ means; the evidence is simply that these parties went out, according to their practice, for the purpose of searching for licenses.”

Chapman ignored him again, like a law professor ignoring a half-witted student for the good of the greater number of well-informed students in the class.

“Well then, gentlemen, it appears that a number of troopers, about twenty, went out for the purpose of collecting licenses, and there was more irritation and exasperation produced by this indiscreet conduct, as I would simply call it, instead of the rash feeling which had existed being appeased. In this manner this mutual irritation on both sides



seems to have gone on for two or three days; the diggers, *or the insurgent portion of the diggers*," my lawyer emphasized this phrase while looking directly at the jury, "then collect - for I am not to suppose that all the diggers were in a state of insurrection at the time.

"On the contrary, I believe there were a vast number of men there who would rather suffer any evil than take any steps against the Queen's authority, but we have evidence that they met from that time for the purpose of drilling, and especially on one day, when they met four several times; they met in the morning, when they were dispersed because they imagined that troopers were coming down on them, then they met at twelve o'clock, then at three, and then in the evening.

"I shall call your attention, gentlemen, shortly to the evidence of Goodenough, and his evidence goes to this, that Lalor's exciting expressions, when he was addressing the assembled people from the stump, were that they were to resist if attacked by the troops; there was no evidence of any intention to attack, there was an arming no doubt but there was no evidence of any intention to make any attack upon the troops, and I think I will be able to convince you before I have done that that attack was a sudden thing arising from the two hostile parties meeting, just as a riot in the street is very often caused from the sudden meeting of two or three persons, and then accident may set the crowd on fire; so here from these hostile parties meeting, the minds of both parties being inflamed, they fire upon each other, and this is what is called treason.

"Well, gentlemen, what does Goodenough say? Why he says that Lalor, from the stump, told them to join as volunteers for the purpose of drilling; he tells you also that they did drill in five different squads, some of them armed differently, and then he tells you of that address of Lalor's to them to the effect that they were to resist if attacked by the troops. Then, gentlemen, I must remind you of the demeanour of this witness, and of the tenor of the whole of his evidence. I think he gives a sufficient description of himself to induce you to exercise great caution in receiving his testimony.

"He tells you that he was disguised as a digger; Peters, the next witness, was disguised as a storekeeper; and other persons were disguised in other ways. There is positive evidence that four men were sent forth disguised in various ways: Goodenough was

disguised as a digger, Peters as a storekeeper, and for what purpose? For the purpose of acting as spies upon these men. Now, men who will be guilty of that extreme meanness of being spies under these circumstances, I say, are men who will not be very scrupulous of telling a lie when they come into the box. I believe it indicates a low moral condition which an honest mind naturally revolts from; and I have always found that where there is a low moral condition it extends itself to almost every act of a man's life; and with a man who would be guilty of a meanness of that kind I should be very cautious in receiving his evidence, and should require all the statements he made to be corroborated.

"What does Goodenough say? He says that Lalor addressed the assembled crowd several times at least three times; that he addressed them for ten minutes at a time. I then asked him whether, in the whole, Lalor had spoken for half an hour. He said, yes, he had. Goodenough had ears for nothing except those few expressions of Lalor which are now intended to convict the prisoner at the bar, who was not there at the time, of high treason.

"This *IMITATION* digger, who went there for the express purpose, and was instructed, no doubt, to see what was going on, and we have evidence that he did report to his officer when he got back; this imitation digger goes for the purpose of hearing everything he could, and reporting the same to his officer; and you have it in evidence that he reports with extreme distinctness a few treasonable or seditious words uttered by Lalor; but he has no eyes nor ears for anything else.

"Now, I say that is a suspicious circumstance; that where a person comes forward in the avowed character of a spy and tells us three minutes' conversation out of half an hour, I say the jury are entitled to have from him everything else that was said. And then he pretends that he could not hear, and he was so far off that he did not hear, and did not attend; and that Lalor kept repeating this. I have no doubt in my own mind that the whole of the speech of that man was directed against licenses and the system of license hunting that took place; that is the inference that I draw. And the witness Goodenough, knowing that that was the case, and that that would tell in favor of the prisoner, or at least would go in mitigation of the extreme charge, what does he do? Why he shuts his eyes and his ears to every sight and every sound except those expressions that he thought might tell against

the prisoner. And the conduct of every one of the witnesses was precisely similar: they heard nothing but what they knew would be against the prisoner; everything they heard against the prisoner their ears were open to; but when there was a single sound uttered in favor of the prisoner their ears were shut like the safety valve of a steam-engine; and whenever there was any circumstance that seemed to tell for the prisoner, they were ready with some explanation that would make it seem to tell against him.

“Now, gentlemen, upon the evidence we cannot resist the fact that the prisoner at the bar was actually taken within the stockade, because he was seen to be taken there by many persons, and he was seen in company by many persons. I am not to resist that fact, which is so completely proved that I should only waste your time if I were to go against it.”

This admission I could see clearly pleased a number of jurors, who smiled and nodded their agreement. Chapman again spoke as a voice of fairness and reason, as opposed to the unjust prosecution and their lying witnesses.

“But I do withhold my belief from the fact that he was seen firing, because the witnesses who speak to him firing were in such a position as would render it extremely difficult for them to give testimony on such a point. The first witness who speaks to seeing him fire was the soldier Lynott; he described the manner in which the attack was made: he said only that they started before daybreak, and marched to the stockade, and of course as the morning advanced the degree of light would advance also; and then he says that the first volley was fired from the stockade. You have the evidence of several persons that that volley was fired when they were at least 50 yards from the stockade; he himself, I think, said 100 yards. You have evidence that it was fired at more than 50 yards, and we may assume that the distance was not less than 50 yards, and may have been something like 100. Of course when firing is going on it is very difficult to measure distances, because every man, however great may be his courage, and however little his mind may be liable to be turned from its usual calmness, it is quite impossible, when you are liable to be shot, for any man to be wholly cool. Some men of course resist the influence of danger in their minds more than others; but generally speaking, and

especially at the first fire, almost every man, however experienced he may be, will feel agitated.

“The most veteran troops at the first fire feel particularly agitated. In the midst of this agitation produced by the two signal guns, followed by the volley from the stockade, and the firing from the troops, I would ask you whether a man would be likely to distinguish the prisoner at 50 yards distance in the gray of the morning, before the light had thoroughly developed itself, for all the witnesses speak to that, that it was not thorough daylight until they arrived at the stockade ten minutes afterwards. At the time they were 50, 60, or 100 yards from the stockade, certainly there was hardly sufficient light to distinguish very clearly at such a distance, and under such perturbation of mind, and yet the witness Lynott, never having seen this man before, distinctly swears that he saw that man fire a gun.

“Now, gentlemen, I think I may offer a reasonable and even a charitable interpretation as to the desire evinced by the soldiers who gave evidence to convict this man. It is in one sense creditable, if it does not carry them too far. All the witnesses have told you of the manner in which Captain Wise was beloved by his corps, not merely the company which he commanded, but by every officer and man in the regiment. In fact, I believe not only in his own regiment, but every person who came in contact with him in private life, felt a pang as if he had lost a friend on hearing of his death. It is so painful a circumstance connected with this proceeding, that I can hardly trust myself to speak of the unfortunate loss of Captain Wise without expressing considerable emotion at that event; and if we strangers can feel thus respecting the loss of a deserving and honorable officer whom we have never seen or scarcely seen in our lives, how much more must his loss have been felt by those troops who have served under him and experienced his gentle command. I believe his character as an officer cannot be spoken of too highly; and therefore I say it is a highly creditable feeling which these men have evinced in speaking highly of Captain Wise as their commanding officer, or as an officer of the corps to which they belonged.”

Did he go too far in this eulogy to Captain Wise, I wondered. On reflection though, I think his dispassionate account of the prosecution case may have helped my cause: I certainly hoped so.

“Then, gentlemen, that being the state of feeling with reference to Captain Wise, it is natural on the part of these men to feel great animosity to those who may be supposed to be connected with his death. One of the witnesses went so far as to say that he saw a gun pointed at Captain Wise, and that he fell directly after that gun was discharged. Now, gentlemen, this charge against the prisoner at the bar is a charge, not of the murder of Captain Wise, for there would be no evidence of that, but it is a *charge of HIGH TREASON*, in which all other felonies or murders merge; no other felonies or murders are of any consequence, and they are no evidence in this case unless they go to support the charge of *HIGH TREASON*.”

My Counsel reminded his audience that I was charged with treason and not murder, by repeating my actual indictment slowly and laboriously twice in the same sentence. Just in case they should forget.

“Now, I think we are entitled to assume that the attachment which these men bore to Captain Wise has induced them to stretch their evidence a little too far; I do not say intentionally to commit perjury, but to look as it were through a colored medium, and because they saw certain guns pointing in that direction, readily to believe that the wound or one of the wounds from which Captain Wise died was inflicted by a particular hand. But there is a piece of evidence which rather goes against that, and it is this - another of the military witnesses said that he saw the prisoner at the bar discharge one barrel of a gun. Now, Captain Wise was wounded by two shots, and it is quite clear, therefore, that no evidence whatever can be received that either one of these wounds was the cause of Captain Wise's death; all that I wish to dwell upon this for now is, that you may not permit the strong feelings of these men, caused by their love of Captain Wise, to bias their testimony, or to present it to you in a stronger light than it deserves, as I believe they have done. It is for you to judge that, it is a matter for great caution, and you will exercise that caution, I am sure, in the reception of their testimony.”

It was with considerable rejoicing that I ticked off the points on my list of suspect areas of evidence, and that Amos had been next on my list too.

“Now, gentlemen, I come to the testimony of Mr. Amos. There is not a great deal in his testimony that touches the prisoner at the bar, except as to the general intent which these persons were bent upon, and whether they were or were not levying war. Mr. Amos seems to have been an amateur on this occasion; there seems to be no evidence that it was necessary for him to go; he was a magistrate, it is true, but there is no evidence that he intended to read the Riot Act. He accompanied the troops, and was in the stockade very soon after it was captured.

“There is some circumstance of suspicion in the manner in which Mr. Amos gave his testimony, when he described his own capture, which certainly was an unlawful act, but certainly not *high treason*. When he described his own imprisonment, which would give him a good cause of action for false imprisonment, and I do not know that it would go further, he told you that when they were half-way between the camp and the stockade he was met by a person on horseback, who appeared to be in superior command to a man called Captain Ross, who had charge of him, and when he asked if that man had superior command, Captain Ross said, ‘The Colonel’. I asked him if it was McGill; he did not know; I then asked him if he knew McGill; I think I put the question in two forms; I first put the question without the word General, and then said General McGill; at all events I will not insist upon it; I then asked him if he knew General McGill; he said no; and it afterwards came out that he knew McGill. Now, his denial was a *quibble*, and a quibble in a Court of Justice is something sailing very near what is generally called a lie; in fact, a person who had been for ten months on the diggings could not have failed to have heard of McGill in connection with these disturbances; and if any one who had been that time on the diggings...”

In jumped the Chief Justice again in support of the Crown witness. “All the witnesses say that they did not hear of him, but there was subsequently some suspicion. I think you are putting it rather too hard. I do not wish to fetter you in fair comment, but I

think you are going rather too hard.” The vigour with which he made his remarks seemed to me to be in stark comparison to the meticulous fairness of Chapman.

Yet again my lawyer was unperturbed by the judge’s unwarranted intrusion into his defence.

“If your Honor thinks so I will withdraw those observations; but when I ask a man if he ever heard of General McGill, and he says ‘No,’ and he is afterwards asked if he heard of McGill, and he says ‘Yes,’ I think his first answer amounts to a quibble, and I think that a quibble of that kind comes very near an *intentional falsehood*; at least that is my idea of a quibble of that kind.

“Gentlemen, the point I wish to press upon you is this, that as to the first part of the testimony produced by the learned Attorney General, to prove that the general intention of the parties who then met was to upset the Queen’s authority or to force Her Majesty to change her measures; so far as the prisoner at the bar is concerned, we hear nothing of him until some subsequent period of time.

“The first time he is seen is on the Saturday. The evidence of Goodenough goes to the previous meetings. I contend that those previous meetings were for a particular purpose, that they originated in a lawful purpose, as is evinced by that placard - a purpose for which all Englishmen may unite together and may meet; and that from the indiscretion of sending out troopers immediately afterwards, armed with sabres, with carbines, and with holster pistol cases, which we may presume were not placed across the saddle for an idle purpose, and probably had pistols in them, armed as it were to the teeth ; these men being turned out in this way (and certainly armed troopers are not a proper instrument for collecting a tax), this led to the unfortunate collision which took place on the Sunday morning between the troops and the insurgents in the stockade, that they were driven to that, and that they had no purpose whatever, such as is stated in the indictment, of inducing Her Majesty to change her measures by an armed resistance, or of deposing Her Majesty from her lawful authority; because, unless you are convinced that these general purposes are intended, as my learned friend very properly opened, then, although it is a seditious meeting, although it may be a very unlawful meeting, and may

subject the parties engaged in it to very severe punishments, yet it does not amount to high treason; it does not amount to high treason unless the purposes named in the indictment are fully proved to your satisfaction.”

He suddenly turned and pointed to me.

“Now, gentlemen, look at that man at the bar; do you suppose that that man, present as he may possibly have been, was present for the purpose of deposing Her Majesty from her rank and authority and station and kingly title in this Colony; do you suppose that such an intention ever entered into his mind; do you suppose that there was any intention in his mind to induce Her Majesty generally to change her measures? No, he never thought of such a thing.

“The meeting in the first instance, the meeting of Wednesday, no doubt was a meeting for the redress of grievances, and the meetings afterwards were for the purpose of resisting that mode of collecting licenses by armed troopers which we have heard described. And then to what was it confined? Why - to resisting the troops if they were attacked. And how were the men attacked? Why - on the Sunday morning, sleeping within the stockade they were roused by an armed party marching up towards them.

“Gentlemen, if an armed party of soldiers march up to my house, unless they show authority, I am entitled to fire upon them, and there is no evidence here of authority being shown. Even under the Smuggling Act, unless Custom House officers show their authority, if they fire upon smugglers, and those smugglers resist them, the want of showing their authority is sufficient to reduce murder to manslaughter. There is no evidence here that any care was taken to show that they were authorised to go up to this stockade for the purpose of taking it; and I say, therefore, that the resistance, injudicious and criminal as it may have been, did not amount to high treason. In fact, there is this evidence, that the magistrates intended to read the Riot Act, but were prevented.

“If they had read the Riot Act, what would it have been? Why, in the first instance, it would have been a riot and if resistance had taken place it would have been-what? Why an armed riot. It would not have amounted to *HIGH TREASON*; the offence cannot amount to high treason unless you are fully convinced that the man at the bar intended to



depose Her Majesty from the style, honor, and kingly name of the Imperial Crown; or unless he intended, by an armed resistance, to induce Her Majesty, or as I will concede, Her Majesty's Government here, to change their measures. As to the lawful attempt, which I call it, which was made on Wednesday to induce the Government to repeal the license tax, is that to be called treason? No, certainly not; *IT IS WHAT EVERY ENGLISHMAN MAY DO!*

“Well, gentlemen, the conclusion to which I have directed your attention is this, that the meeting of Wednesday was a perfectly lawful one. There is no evidence whatever given to show that there was anything unlawful which took place at that meeting. It may have been a violent one. We have no evidence of what speeches were uttered; very angry speeches may have been made. We have read and heard of very violent speeches being made in other places, and I am not here to justify violent speeches, but I am here to show that that meeting was not an unlawful one, and I challenge my learned friend to show that it was.

“Then, gentlemen, that being lawful, what is the next step in this transaction? Why, then ensued a raid for the purpose of collecting the obnoxious tax. Then, gentlemen, why were the troopers employed at all for the purpose? Why were not proper collectors employed to ask for the license fee, or to collect the licenses in some regular manner, and to inspect licenses at regular times? These men seem to have had a perfect discretion to go out whenever they pleased, rendered angry by the jeering and 'Joeings' constantly leveled against them on the diggings. Whenever they chose they were ordered out to inspect licenses; sometimes they were inspected twice in a week by directions, so that a man, at all events, was liable to be called upon eight or nine times a month to show his license.

“But in point of fact the license was much more frequently asked for, because there appears to have been so little organization amongst these license hunting parties, that two separate parties might travel over the same ground, and it might happen that a man was asked twice or more on the same day for his license. Now, I ask, gentlemen, is not that vexatious? These men were driven to hold meetings, that certainly afterwards became unlawful; they were induced to hold meetings at which they armed; they were unlawful

meetings I admit, but they were not high treason. They might have been indicted for holding unlawful meetings; they might have been indicted for conspiracy; they might have been indicted for sedition, if their speeches were of that nature; but there was no treason in those speeches: they were unlawful, but not treasonable.

“Then these men, driven as it were by the vexatious course of conduct adopted in searching for licenses, and the vexatious mode in which the license fee was collected, what do they do next? Why they raise a stockade for the purpose of guarding themselves from the attacks that were apprehended. What does that prove? The only evidence given as to intention throughout the whole of this case is the words attributed to Lalor, and what does he say? Why he says, ‘If the soldiers attack you, resist them,’ and that is what they did; and I say the soldiers marched up there without showing sufficient authority, and that that want of authority stripped the case altogether of its treasonable character.

“It was an attack made on the part of men who were behind that stockade, for the purpose of defending themselves against troops who had not put themselves in a lawful position, either by reading the Riot Act or by showing some authority under which they acted. Because, as I have said before, if troops march up to my house, and attack that house, I have a clear right to resist them; they must show authority, and if they have any person to arrest, they must show a warrant. Here there was no authority shown; there were no warrants shown; in fact, an attack was made, and the troops have since been thanked by His Excellency Governor Hotham for making the attack before any attack was made on them, and the resistance then was that species of resistance that Lalor recommended, namely, to resist if they were attacked.

“Then, gentlemen, I must again remind you of this flag which is so much relied upon, which is an old acquaintance of mine, and I hope an old friend of yours. It is a flag under which my learned friend has already enlisted for another purpose, and under which I have also enlisted. Let me remind you once more that the hoisting of flags is a common thing on the diggings; we have evidence that 200 are to be seen flying at the same time there. One witness said that every store had a flag, another witness said every tent had a flag; most of the stores are tents, and therefore we may consider the word ‘tent’ almost

synonymous with 'store'; every person hoists a flag; what he means by it we cannot tell. That flag once had meaning which I understood - what it means now we cannot say; probably it meant that the flag was used by a body of men who were united together for the purpose of obtaining the repeal of the license fee. Gentlemen, I ask you therefore once more, upon the whole of this testimony, whether you will deliberately upon your oath as twelve reasonable men come to the conclusion that that man's intention was to upset the Queen's authority in this Colony, or to induce her to change her measures; because unless you can come to that conclusion, however culpable that man's conduct may have been, it certainly does not amount to high treason."

This masterly, rational and fair presentation of our case had not, I thought, been weakened by our not having produced witnesses of our own. I hoped the jury had been as spellbound as I. I had read speeches of the great eighteenth-century rationalists such as Thomas Paine, and I thought that this summation must have rivaled even them. This advocate had all the theatrical gesticulations at his command, and a well modulated voice to present this most reasonable defence.

My only fear was that it left one feeling emotionally unmoved. It had been a clinical dissection and demolition of the Crown's case. But was it sufficiently emotive to give the jury more than legal grounds to acquit me?

## CHAPTER FORTY THREE

I had no time to continue these gloomy thoughts, for as soon as Chapman sat, Aspinall rose. He looked well-groomed and, bewigged as he was, he took on some of the courtroom dignity. However, he seemed somewhat flushed, and I could not help speculating that he might have been on the brandy the night before. His voice was not so commanding as Chapman's, and it was with some degree of trepidation that I listened to his closing argument on my behalf.

"May it please your Honour – Gentlemen of the Jury – In this case, in which, from the importance of the charge of high treason, two counsel are allowed, I feel it my duty in a few words to follow my learned friend, and to add what little I have to say to what he so ably said.

"The beginning and end of his speech are that he points to the man in the dock, and he asks whether you, on the part of the British Crown, would be liable to alarm from any attempts of that individual to subvert the Constitution to which you are so attached; whether you can suppose for a moment that he could ever conceive such a dream."

Here his voice, with a softer Irish accent, began to drip with vitriolic sarcasm, and I wondered if his attempt to stir the jury might not be rather too strong. But there was nothing I could do about that now, so I could only listen as he let rip.

"Why gentlemen, I believe myself that the ridiculousness of it must be as patent to the law officers of the Crown as it is to you; and I must say that for my part I feel for the position of my learned friend the Attorney General in conducting this prosecution. No doubt it was hoped that that amiable looking ruffian, Hayes, would be tried first, and if that had not been successful my learned friend had then the foreign anarchist Raffaello, and failing him, there was the anonymous scribbler Manning; and however small his chance of success in those cases his position would not have so positively ridiculous in prosecuting any of them; and there would have been this" here he turned and pointed to me, "*black* man in reserve in case you declined to convict a Briton!

“Gentlemen, there he is, accused of an intention to subvert the British Constitution and depose Her Majesty, set up here as a sort of political Uncle Tom, and you must look upon him, I suppose, either as a *stupid* negro, a *down south* man who had no conception of treason in his head, or as being actuated by the eloquence of Lalor on the top of this stump, and actually prepared to defend himself, and that he had some idea, that though a *negro*, in any British possession he was entitled to his liberties. Here, gentlemen, it is no longer ‘The Queen against Hayes and others for High Treason,’ but ‘The Supreme Authority,’ as we are told by my learned friend the Attorney General, against this person Joseph, vulgarly, and as it appears illegally, called ‘Joe,’ and he is accused of ‘having levied war against our said Lady the Queen, within that part of her dominions called Victoria;’ and this is a most heinous offence, so we are told, and so we believe.

“But the question is, to convict the prisoner, says the Attorney General, you must be satisfied that there was an insurrection, accompanied with force, and for a public object. But, gentlemen, you must know that those public intentions were the prisoner’s intentions, and you must not be put off the scent; and you must not be tempted to do a cruel thing by those insinuations which have been thrown out that this man is supposed to be here charged with high treason, but that that is a mere technicality, and that you are, in fact, trying him for the murder of Captain Wise.

“Why, gentlemen, if he were on his trial for the murder of Captain Wise, you know there is no possible evidence against him; and I consider it a most extraordinary, and not a very creditable thing, that when he is being here tried upon one charge, you are tempted to look upon him, not as a dangerous traitor, but as a person whom you may as well hang because he shot Captain Wise. And that is the way in which this case has been presented to you. It would be simply ridiculous folly to ask an intelligent jury to convict that man of high treason, or to suppose that he had a single notion of high treason in his head; and the thing would be scouted out of Court only that it comes backed up with this charge of shooting Captain Wise, and you are to be told that you may, therefore, convict him of high treason, which will do as well as anything else - that you will convict him under the name of high treason for shooting Captain Wise. But, gentlemen, Captain Wise had two wounds,

and whichever of those wounds he died of, at any rate there would be a question as to whether the prisoner had anything to do with either of them. You saw in the evidence here throughout that everybody was firing at the same time, and this man, this black fellow, who had been sleeping in the stockade the night before -and we are not to go out of these three days' business during which this great treasonable conspiracy was arranged, and this prisoner was levying war - we are not to go into the particulars of the whole transaction - you are simply to consider the evidence against him, and that amounts to -what? That he was there; he fired in a particular direction at a time when various other people were firing in the same direction; and that Captain Wise fell somewhere about that time. Now, if that is the fact, then I say it is obviously unfair to this prisoner, and too cruel to bring him here charged with high treason, and then make the death of Captain Wise the whole case against him."

My first reaction to Aspinall having brought the question of my race into play was outrage, then I began to realize that he was just building on the foundation of my acting as a stupid oaf for the sake of the jury. I, and many of my colour, had for centuries, as slaves for various despots, resorted to acting the fool in order to save our necks. I had to remind myself that this lawyer was trying to do just that for me, but I was not at all comfortable about it. Nor could I blame him for using the trump card that Chapman, if I had heard him correctly, had only obliquely referred to. It was astounding to me to think that an accusation of racial prejudice made against these law officers of the Crown might actually win me sympathy in this foreign land. Aspinall continued to press his point about the racially-motivated charges against me to a point beyond which I would have ever dared to go.

"It is well enough talking about these soldiers and their devotion to their officers, and so on, but we cannot be so devoted to our officers as to convict people because they are the *blackest* we can find in the place. And you are also to consider that nearly the whole of the evidence given would really go to show that the Crown seemed to have considerable doubt whether there was a rebellion at all. The majority of the men that came into Court had nothing to say about this black man," he said, pointing to me.

“That man whose very clothes were a living lie and who was trotting about amongst the diggers giving his views, and who offered to stand up for his rights and liberties, who was warned by some very facetious officer not to look too respectable, and who went in amongst the diggers for the purpose of inciting them, and who gave us a great deal of evidence about the drilling, could not connect Mr. Joseph with those meetings.

“It does not appear that he is a public speaker; and it does not appear that he could write; and therefore he could not have signed any of those important State documents of which this Colony is so profuse.

“So far as I can see he is never heard of till Friday, when it appears, according to the evidence of one of those spies, he was drilling. He was drilling, according to Mr. *Spy* Peters, in this company with Raffaello ; according to the other spy, Raffaello was with a company composed, as he believed, entirely of Italians and Frenchmen. This gentleman I do not think to be either a Frenchman or an Italian, although I do not suppose, so far as the first spy's evidence goes, that it would take a considerable amount of persuasion to make him believe that this individual belonged to either of those countries.

“It comes, then, gentlemen, to this - there is no pretence that he was at the first meeting; there is no pretence that he has ever been talking seditiously to anybody; there is nothing attempted to be shown in order to connect him with this transaction, except this drilling the Friday, and his being in the stockade on the Sunday. It is a matter of public notoriety that nobody was let go out of the stockade.”

He turned again and pointed at me again. “This person declines to be made a hero of, and instead of his having any strong desire to be defended on constitutional grounds, my instructions are that his simple answer to all this charge is, that his tent was, like this respectable Waterloo man's, which was burnt down, to his inexpressible disgust, within the stockade, and that he was there also. That his license was in his pocket at the very moment he was taken, so that evidently he had not burnt it; and there is his assertion for whatever it is worth, that he did not wish to subvert the British Constitution, and that if *you* are contented with it, *he* is.”

Here Aspinall paused so that laughter could erupt briefly in the courtroom before the judge's gavel descended noisily. "The worst that appears to be attempted to be proved against any of these people, any of the *great* fellows even, the utmost they seem to have done is to hold a meeting, and there is something about a request to burn licenses, which is very much like that ingenious Irishman's plan of ruining the manager of a bank by burning his notes."

Another pause: more laughter.

"Supposing they did hold a meeting, and supposing they employed their time in purchasing licenses, and supposing they chose to burn them, I imagine that burning a license is a luxury which as long as a man has got a license to burn he will not be deprived of in a free country."

"Then, again, when we come to these meetings, we find that the utmost the first witness could say when he rushed up into the box, having got back to his uniform, was three sentences. This gentleman had come here against Hayes, and you will remember the excessive glibness with which he rushed off about Hayes, who had been speaking in an excited manner, of which speech this witness recollected three sentences, those sentences being precisely the ones they wanted, and which he had left his uniform at home to get. All that that man said about Lalor, perhaps one of the traitors unknown, was this (and that appears about the extent of what he or any of them did, and that seems to have been *a most awful crime*), that under a semi-military Government where they had been exposed to the torment and torture of these police; where a party of fifteen might go out on the same day to collect licenses in the same district, and ask the same man one after the other for his license which must be rather tiring, at all events, to the subject of the enquiries - the utmost Lalor said they were to do was - what? To join together for self-defence, which I believe to be the first law of nature, and as good as any of those passed in the Legislative Council of this interesting Colony.

"Gentlemen, the thing just comes to this - nothing whatever can be proved against this person; there would be no attempt on the part of the Crown to prove that in the course of any intellectual operations this man had been busy in attempting to subvert the



Constitution. They do not want to have him at any meeting, or put him forward in any way except as one of the herd who were dragged into this movement, and he is now pompously called a gentleman who levies war against the Queen.

“There he is, gentlemen, and the question comes to this, as to the testimony on which you are asked to convict him. Now, a spy's testimony is worth this, he begins by telling you he has got his information by a course of lying and deceit; he has been betraying men of his own class, and been selling them to the Government, and if he happen not to be on the Government side up to the last it is quite clear that his function as a spy is gone; a spy has no object or no reason so strongly upon him as that of doing service to those who send him out; and if he goes to a meeting his business is, as he pretty generally shows you, to go back with the largest possible amount that he can conveniently provide of the kind of information he was sent there to get; it is a question of imagination purely.

“You are told by one of these spies, and only two have been put before you to-day, that this man was with Raffaello; then you are told by the other that Raffaello had a company composed entirely of Italians and French; the other witnesses had nothing to say to show that there was a rebellion; one of them says the work was stopped out of curiosity, and you can only get just a few to tell you anything about the prisoner. One of them was Mr. Carter, that valorous gentleman, who it appears after the thing was over went to a tent, and having ascertained that there was somebody in it, very judiciously and prudently sent two soldiers in to bring them out, and I believe on an average got them out. When they got them out, he again judiciously handed them over to the 40th, the soldiers having been made the jackals of the Police, the Carters bringing the men out of the tents unarmed, and the Wises getting shot to enable them to do so.” I was, like the rest of the court, shocked that he should speak of Wise in less admiring and unctuous tones than his colleague Chapman.

“You then come to the evidence of the soldiers, and the utmost they have to say is, that they got up on a dark morning, before anybody else was stirring about, and went off to the stockade, and curiously enough, on their way, when it was so dark, before they got there they were met with some firing from the stockade.

“Well now, gentlemen, it is just possible, indeed it is quite possible, that those gentlemen who had been so busy going to diggers' meetings, talking politics, and when need be running away with the expressions and words of the diggers, it is quite possible for one of these gentlemen to have been in the stockade, and to have been amusing himself with these preliminary shots, by which the guilt is attempted to be fixed on the insurgents, as they are called, and why but for this, for the purpose of letting the military, who were coming up in the dark, know precisely the locality of the stockade, or to put the diggers in the wrong by making them strike the first blow.

“We know that His Excellency sent a very polite letter to Captain Thomas, in which he informed him that he had acted very judiciously in attacking the insurgents, instead of waiting until they were the aggressors.

“So that when you consider this Sunday morning which was so piously and judiciously chosen for this onslaught by the troops, you may reasonably judge that there is a very good chance of these shots having come from someone besides those men, whose whole course of proceeding throughout had been, that at least they were tired of the license fee, and this intolerable digger hunting, or whatever it is to be called, and for the future they would passively resist, or at least possibly would exercise the right of self-defence if attacked, and here we have the Lieutenant Governor himself complimenting the officer in command on having been the aggressor.

“If that is the case, the thing that next presents itself to your minds - and that, I think, must be found to present itself to any reasonable mind in this country - is, how is it, and why is it, when it appears all these prisoners were taken, when there was a rebellion, and all this consternation throughout the country, how is it that this is the first person, and the only person, you have got to try?

“Why, even a respectable American would scorn to try him, and we are supposed to be addicted to the Americans. There is no law against burning licenses in this Colony, although this Colony differs to a great extent from England, and although the Attorney General, in his ardour for the supposed inferiority of this Colony to Great Britain, was extremely anxious to stop the right of challenge, and although the prisoner was brought to

be tried from Ballarat, where he was known, to Melbourne where he was not known, and is now put before you as a man whom you might as well hang as an example.

"If that is the sort of British Constitution that he is to express his admiration for, why it is quite clear he would not be a Briton if he did admire it; and I must say, that I should like to see this Colony very much more like Britain than it is.

"Gentlemen, this prisoner's plain and simple story is that he arrived at Ballarat; that he had his license upon him; that his tent was within the stockade, like that of that of that Waterloo individual; that he was there with no more idea of subverting this apparently very shaky British Constitution, than he had of flying.

"He was there as they all were, trying to get his living, and I dare say objecting to being bullied and tortured by police as much as Englishmen do; and it is very remarkable that he did not, as an individual, object to this license system; and nothing is proved until he is proved to be in the stockade.

"And then there is that cruel and extraordinary attempt to connect him with the death of an officer, whose death it would be impossible to ascertain the cause of in the melee, if you were to try for ever. If it was so easy to ascertain the cause of death, and how persons died, and who died rightly or wrongly, why, gentlemen, let some of the witnesses tell us the result of all the coroner's inquests there. Captain Wise died, at any rate, in the discharge of his duty, and in the aid, unfortunately, of these police; and to attempt to connect his death with the firing of this man is to ask you to forfeit your oaths by which you are to consider whether this person has attempted to depose the Queen, or induce her to change her measures - it is to ask you to forget that, and to ask you to say, 'Well, we may as well convict him, because perhaps he shot Captain Wise - somebody did it - it is a most cruel and bloody thing, and we may as well convict him.'

"Nothing is proved against this person but that he was in the stockade, and his statement shows why he was there; and admitting even that there was a *black* man there, I cannot go quite so far as my learned friend in assenting to the capacity of the witnesses to identify him. I would no more know one black man from another than any one, except its mother would know one baby from another, or anybody except a squatter would know one

sheep from another; there are plenty of black men on the Gold Fields, and it is almost impossible for anybody but a slaveholder to know a negro from his fellow.

“Mr. Carter tells us that he found him unarmed in a tent; it is highly improbable that he would have been found at all if he had not been unarmed! The fact of his being a prisoner is a great evidence that he was not armed, and therefore it is a question whether you would be persuaded, from the fact that an officer has died, that this person was intending to depose Her Majesty, or to alter the laws of this Colony. If you suppose he was, then perhaps the best thing will be to let it go forth that there was a solemn array of Judge and jury and the law officers of the Crown to try this person on the supposition that it was his intention to destroy the Constitution of this Colony; and for that purpose he was levying war - and for that purpose leading on all the Irishmen, Scotchmen, foreigners, and others, to the number you have heard spoken of.

“If you do so, I think you will live to regret it.

“I think it is only too possible and probable in the course of these trials even, for it may come out any day, that any day there may be forthcoming evidence convicting the real man who shot Captain Wise; at any rate there have been several persons talked of, and plenty of doubt on the subject, and indeed on the part of some people there have been boasts that they have been the cause of the death of this gallant officer. Any day we may hear who it was, and in the meanwhile you will have convicted this man of being a traitor, because in the same direction in which he fired Captain Wise fell.”

With this sober word of caution, Aspinall quickly sat down.

This speech absolutely took my breath away, and I was sure, because of the absolute silence for a minute or two, that most of the jury as well as those in the public gallery shared my reaction. It took me a very long time to digest what the junior defence lawyer had said. He had coldly portrayed me as a sort of sub-human being, incapable of thinking, writing or leading other men. But considering his line of argument in the context of my defence, for some reason the patent insults did not cause me pain. Though we had verbally sparred, and I had felt a deep distaste for him, during the course of the trial my feeling for him had changed to a sort of grudging admiration.

This man had a way of being brutally frank, and I felt that the law officers of the Crown, as well as the prosecution counsel, and even the judge might have been chastened by his scathing criticism of having a riotous black man in reserve to hang, if the jury refused to execute a Briton: for Briton read white man. In fact, the closing arguments for the Prosecution became more a self-defence against Aspinall's thinly-veiled accusations of official racism, than a summary of the case against me.

While Stawell and the Chief Justice whined and carped through their respective summing up speeches I was preoccupied with dealing with my own reaction to the words of Aspinall. I no longer detested him, and I felt great admiration for his willingness to introduce a passion into his speech, which Chapman had not. So on the whole I felt that Aspinall's moving plea for justice for me dovetailed perfectly with the rationalism and logic of my senior counsel. Whether I lived or died as a result of the jury's decision, I felt an overwhelming sense of gratitude to these two men who had provided me with a priceless defence: men who insisted in representing me at no cost, and yet had both tried their utmost to ensure my acquittal.

The jury filed out and I awaited my fate.

## CHAPTER FORTY FOUR

It is a frightening experience to be tried for high treason, and the three days of my trial had seemed an eternity to me.

It is a worrying experience to await the verdict of a jury after one has been tried for high treason.

It is surprising to feel the sense of ecstasy when that jury pronounces its decision that you are not guilty on all charges. Those charges levelled by a vindictive and corrupt government. My feeling on being acquitted was, I thought, like that of a great general defeating a far superior enemy.

But the feeling on being carried out of that court on the shoulders of a joyous crowd, and along the main streets of Melbourne is beyond description.

Eventually I was lowered to the ground outside a pub, and the publican must have thought that his fortune was made, as those, including myself, who lifted glasses brimming with beer and liquor stretched out of the door of the hotel and along Bourke Street. We all stood around laughing and cheering, when finally Pierre and Moya made their way through the crowd to me. They too were forced to pledge toasts to myself and all other diggers, especially those still awaiting trial. It was a long time before we could escape the throng, for although I did want to remain and celebrate with them, there were other, more pressing things for me to do.

Pierre finally got in a hurried word.

"When you're ready, and when your admirers let you go, make your own way to our place, for there's a party of your friends gathered there for a special celebration."

"I'll come as soon as we can get away, but first I'll have to go back to the court, and thank Grant, Chapman and Aspinall. Without them I'd be getting ready to swing at the end of a rope!"

"Don't worry about that, they're already at our house. We stayed in the court, and after you were carried out A'Beckett went mad at the demonstration, and had the officers of the court arrest two of the audience for contempt, and sentenced them to jail then and

there. So it is not a good idea for you to go back, because I don't think he formally dismissed you!"

Knowing that all of my friends were at Pierre's I happily complied. But it was a fight to make my way through the rejoicing crowd, and to relieve the tension I jokingly told Moya that I would need to borrow the contents of her powder compact to disguise myself. But I don't think she heard me.

Finally we escaped, and I was greeted by a no less enthusiastic group of friends, including Father Lucien and all three of my lawyers. I went to them individually and expressed my thanks, and could not hide my tear-filled eyes as I did so. What moved me most were the gifts – beautiful personal gifts that showed me that they had not shared my fears of being found guilty.

Aspinall gave me a French Bible. I thanked him for it in French, and he threw back his head to laugh heartily; it was the only time I ever saw him do such a thing. Chapman gave me a book by one of his French-Canadian friends who had been convicted of high treason and sent to prison in Sydney. As I opened it he spoke to me with great sincerity.

"It has been a privilege to represent you, and I thank you for your confidence in us," here he indicated his two legal colleagues. "This book was just recently published, and you will see how I have always seemed to become involved in hopeless cases – even in my days as a young journalist in Canada. I also want to say to you that I think you should be aware that there is a special destiny of some kind awaiting you. But one word of caution, I would advise you to think about leaving the Colony in the near future, and would not show myself around town too often. Some of those soldiers who thought you had shot Captain Wise might be tempted to take the law into their own hands, and take a pot-shot at you. You're a fairly obvious target. Did they take much money or goods from you when you were arrested?"

"Just a receipt for the nag that Sam escaped on, my digger's license, and about seven or eight pounds in cash."

"Then I should not think of returning to Ballarat, nor would I go anywhere near the police to reclaim them."

I nodded assent, and the rest of my assembled friends gathered round me, and called for me to speak. I took a glass of red wine from Pierre, then began by thanking them all, and raised my glass toasting “good friends, and the best lawyers in the world”. The celebrations from there are somewhat blurred.

Most of them had left when I woke and came down to breakfast, but Father Lucien, Pierre, and Moya sat around the kitchen table, all drinking from large cups of coffee.

As I drank my coffee, my head began to clear, and Pierre told me what had happened to Sam.

“He arrived here five days after your arrest, and said that he had watched from a mineshaft outside the stockade while you were marched away. He thought they would release you eventually, as most of the people on the Eureka knew of your pacifism. He did not feel secure here, so he took the envelope you left for him, and took passage as a ship’s cook from Geelong. What are your plans, if you’ve thought about them? We would be delighted if you stayed with us while you think it over, but I warn you. You’ve become a celebrity!”

He showed me the front page of a special issue of the *Melbourne Age*, with quotations from my counsels’ closing arguments, and reporting the rejoicing of the spectators, as well as the judge’s furious punishment of the joyous diggers in the public gallery. I thanked them, but told them that I too wanted to leave Victoria, to ensure my own good health. I stayed a day or two to get my money from Pierre, and was very pleasantly surprised that I had so much left.

Father Lucien I asked to accompany me to Geelong, for having a priest with me might make it easier for me to leave town, and I wished to talk to him on the journey. When I asked him to come with me he said he was delighted, and knew the captain of a pilot boat who would carry us to Geelong.

Saying goodbye to Pierre and Moya was especially sad, for we all knew that there was little chance of our meeting again. But the ever-confident Pierre promised, “When we have put enough away from the photography studio, we’ll come and see you in San Francisco. And this time I’ll shout you a fine meal!” But we all knew that this was goodbye, so



Father Lucien and I left quickly through the back door, into the dark alley, and finally to the deserted quay.

On the boat the quiet priest gave me a book, in German, containing the sermons of Eckhart.

“I thought of trying to translate them into English or French for you. But I had this extra copy, and I knew of your ability with languages. I also remembered that you had begun to learn German from Eddie. So this is from me, especially in memory of a fine and honest man. I know that you will be a success whatever you do, and I remember dreaming that someone like you would become a friend. It may be many years hence, but this is only *au revoir*.”

I couldn't speak, but we embraced before he left for the return trip to Williamstown.

There were dozens of ships in Geelong harbour seeking cooks, and I chose a British ship large enough to make a fast passage to San Francisco.

At dawn we made our way through the entrance of Port Phillip Bay, with its deadly rip. I stood at the stern and watched the shore slip away, then before going down to the galley, I looked ahead beyond the bows of the ship, to where I hoped to find other old friends awaiting my return.

I even felt nostalgic for the disgusting beer served at the Atheneum.

A Riotous Black Man  
from  
Way Down South

An historical novel, exegesis and response  
to Examiners

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## PART A: EXEGESIS

### INTRODUCTION

I first met John Joseph through a chance encounter in the *Melbourne Age*, in editions originally published in the month of February 1855. For a fortnight his fame flamed like a comet across the southern skies, only to disappear from view following its brief transit. He was an African-American of uncertain age, and his incongruously diminutive figure was roughly sketched in the dock, accompanied by his twelve co-accused. The group was charged with the capital offence of High Treason, and like his comrades Joseph had been taken into custody following the rout at Eureka. In spite of the notoriety of the case, the newspapers reported not a single word spoken by this man, recording only his panache in rejecting more than twenty potential jurors.

Intrigued by the discovery that the first man tried for treason at the Eureka Stockade uprising was a black American, I abandoned my original project in pursuit of further information about him. There was not, in fact, very much to be found. Joseph had been arrested at the same time as Raffaello Carboni, and shared a cell with him. While other American insurgents appear to have been assisted in evading or escaping arrest by U.S. consular authorities in Melbourne, no attempt was made to aid Joseph, whose colour precluded his enjoying the benefits of United States citizenship.

Little is known about Joseph's life before his involvement at Eureka, but he seems to have made a favourable impression upon his cell mate, who described him as a New Yorker, with "warm, good, honest, kind, cheerful heart; a sober, plain-matter-of-fact contented mind..."<sup>1</sup> Carboni offers us another glimpse of Joseph, just before the latter's trial for treason. " 'What will be the end of us, Joe?' was my question to the nigger-rebel. 'Why, if the jury lets us go, I guess we'll jump our holes again on the diggings. If the jury won't 'et us go then' – *and bowing his head over the left shoulder, poking his thumb between the windpipe and the collarbone, opened wide his eyes, and gave such an unearthly whistle, that I understood perfectly well what he meant.*"<sup>2</sup> [Carboni's emphasis]

Following his trial and acquittal, Joseph disappears from the official record. Indeed, he did not claim his belongings which had been taken from him at his time of arrest. While under arrest he had complained that seven pounds in cash had been

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<sup>1</sup> Raffaello Carboni, *The Eureka Stockade*, Melbourne, Melbourne University Press, 1963, p. 124

<sup>2</sup> *ibid.*, p. 140

confiscated by the police, as well as other personal effects: after his acquittal he did not even wait around to see if he could retrieve these possessions. He simply disappeared.

I then took that critical step of asking myself, “What if...?”

The following chapters reflect on the development of that question. They address the nature of the genre of historical fiction, offer a justification for the decisions that were taken about the protagonist and the construction of his story, and explain the psychological and spiritual threads woven into this *bildungsroman*. Chapter three surveys the main primary and secondary sources I used in researching the novel in my attempt to avoid undue violence to the historical record. Finally, in Chapter four I explore some of the sensitive ethical issues raised by my attempt as a white, middle-class product of the twentieth century to write the inner life of a black slave born a century and half before.

## CHAPTER ONE

### GENRE

Thomas Carlyle once asked, "What if many a so-called Fact were little better than a Fiction?"<sup>3</sup> Yet the potential for colour, movement and excitement implicit in history has often gone unrealized. As Carl Becker has pointed out, formal histories have always presented "a foreshortened and incomplete [representation] of reality"<sup>4</sup>, but in more recent times, the demands of the publish or perish syndrome and the quest for legitimacy in the eyes of other specialists have, it has been claimed, exacerbated a trend towards dullness and greyness in much historical writing.<sup>5</sup> This, it has been argued, has created a void to be filled by historical fiction. No-one familiar with such modern works of Australian history as Robert Hughes's *The fatal shore* would find such writing dull, yet, even given the largely successful attempts of such authors as these to give voice to those once lost to history, the privileged position of historical discourse as the only truthful representation of the past has not gone unchallenged.

Writing of Brazilian history, Valente has claimed that "literature plays a unique role in the recording and interpretation of reality that makes the work of writers and literary scholars indispensable to efforts to make sense of the complex and paradoxical scene in twentieth-century Brazil".<sup>6</sup> He endorses the claims of the novelist Silviano Santiago that Brazilian fiction has been characterized by a search for alternative ways of reconstructing the past and giving voice to the forgotten or ignored, and that Brazilian novelists have "sought to recover the past as a partner rather than a servant of history".<sup>7</sup> He quotes with approval Joao Ubaldo Ribeiro's epigram that "the secret of Truth is as follows: there are no facts, there are only stories".<sup>8</sup> Similarly, Daniel Aaron, emeritus professor of English at Harvard, has pointed out that, until recently, historians paid little attention to blacks or women as historical actors; this is quite different from the approach of historical novelists, he claims.<sup>9</sup>

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<sup>3</sup> Quoted in Daniel Aaron, "What can you learn from a historical novel?" *American Heritage* October 1992, 43, 6, p.55

<sup>4</sup> Quoted in *idem*.

<sup>5</sup> *idem*.

<sup>6</sup> L. F. Valente, "Fiction as history: the case of Joao Ubaldo Ribeiro" *Latin American Research Review* 28, 1, 1993, p.41

<sup>7</sup> *idem*.

<sup>8</sup> *ibid.*, p.44

<sup>9</sup> Quoted in Daniel Aaron, "What can you learn from a historical novel?" p.64

The North American Hayden White has argued for the metaphorical dimensions of historical writing:

Historical narratives are not only models of past events and processes, but also metaphorical statements which suggest a relation of similitude between such events and processes and the story types that we conventionally use to endow the events of our lives with culturally sanctioned meanings. Viewed in a purely formal way, a historical narrative is not only a reproduction of the events reported in it, but also a complex of symbols which gives us directions for finding an icon of the structure of those events in our literary tradition.<sup>10</sup>

On the other hand, there is a difference between literary and historical truth:

The relation between collective ideology and great individual, literary, philosophical, theological, etc. creations resides not in an identity of content, but in a more advanced coherence and a homology of structures which can be expressed in imaginary contents very different from the real contents of the collective consciousness.<sup>11</sup>

Ribeiro, however, suggests that fiction can come nearer to the truth than history, because fiction admits its incompleteness and bias, and, Valente would add, historical fiction of the late twentieth century is less likely to embrace elitist reconstructions of the past; rather it “[focuses] on the marginalized or the forgotten and [on] characters representing atypical individuals in a social and political space marked by discontinuities and fragmentation.”<sup>12</sup> The narrator of Ribeiro’s novel *An invincible memory* claims:

History is not just the one that’s written in the books, if for no other reason than that many of those that write books lie much more than those who tell fairy tales... All history is false or half false, and each generation that arrives decides about what happened before, and so book history is as invented as newspaper history, where you read so many lies your hair stands on end.<sup>13</sup>

Butterfield would claim even more for the novelist - “In reality, the poet, the prophet, the novelist and the playwright command sublimer realms than those of technical history because they reconstitute life in its wholeness”<sup>14</sup> – a view which recalls Samuel Johnson’s dictum that for the writing of history “imagination is not required in any great degree.”<sup>15</sup>

D. Wilson argues that very little separates history from fiction:

[Historical] research uncovers the peaks of relative certainty; those things that can be known about the past. What remains for the historian are dark gorges to be bridged

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<sup>10</sup> H. White, *Tropics of discourse: Essays in cultural criticism*, Baltimore, Johns Hopkins University Press, 1978, p.88

<sup>11</sup> L. Goldmann, *Towards a sociology of the novel*, London, Tavistock, 1975, p.9

<sup>12</sup> L. F. Valente, “Fiction as history”, p.52

<sup>13</sup> Quoted in *ibid.*, p.53

<sup>14</sup> Quoted in P. Dukes, “Fictory or Faction?” *History Today* September 1999, p.26

<sup>15</sup> Quoted in D. Wilson, “Stronger than Fact?” *History Today* January 1999, p.44

by hypothesis; for the novelist, inviting valleys waiting to be peopled by engaging characters and events. Both kinds of writer offer suggestions based on imagination. Is the difference between the historian's "This may have happened" and the fiction writer's "This could have happened" really so great?<sup>16</sup>

He maintains that both history and historical fiction share a common purpose, in that "both explore a foreign country in order to show not that 'they do things differently there' but that, beneath the thin epidermis of distinctive customs, attitudes and conventions 'they' are activated by the same intellectual, spiritual and emotional impulses as are we".<sup>17</sup>

How, then, is one to define the genre "historical fiction"? Aaron cites, without attribution, a description of the historical novel as "a kind of mule-like animal begotten by the ass of fiction on the brood mare of fact, and hence a sterile monster".<sup>18</sup> This blanket condemnation of a whole genre cannot be justified either in terms of the quality of the writing, the significance of the research, nor of the integrity of purpose of the best examples of historical fiction. It must be admitted, however, that, as in historical non-fiction, some work is better than others.

Thomas Keneally has identified three categories of historical novel. The first is the notorious, and popular, "bodice-ripper", described by Aaron as "the costume romance... in which history serves as a flimsy backdrop for fantasy and derring-do"<sup>19</sup>. The name says it all. The second "provides genuine historical instruction rendered more piquant and given reality through the lives of specific people of the period. The limitation of this group is that the writer can do no more, in fact sometimes does less, for the subject matter than does a good historian or biographer". The third and, Keneally says, the best, "is that which, though set in the past and amply vivifying it, is also a model of the present. It is not particular and peculiar. It is universal and, however well researched, timeless".<sup>20</sup> It is works in this last category which justify the genre as literature, rather than as a kind of literary fast-food.

During the last two decades, a number of works of historical fiction have blurred the lines between fact and fiction, drawing the wrath of professional historians. Gore Vidal's *Lincoln: a Novel*, published in 1984, upset many by its mixture of contemporary rumor with documented fact.

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<sup>16</sup> *ibid.*

<sup>17</sup> *ibid.*, p.45

<sup>18</sup> Daniel Aaron, "What can you learn from a historical novel?" *American Heritage* October 1992, 43, 6, p.59

<sup>19</sup> *idem*

<sup>20</sup> T. Keneally, "Lincoln: a Novel" (Book review) *The New Republic* v. 191, July 2 1984, p.32



Had he declared at the outset that his novel was pure fiction, the characters inventions, no one could fault him. But to pretend “to deal with real persons and events”, and then to twist them in the process, to conflate history and fiction – this is insupportable... He is challenging the taken-for-granted assumption that history is history, fiction is fiction, and never the twain shall meet.<sup>21</sup>

Aaron maintains that “what [professional historians] deem “historical” in the historical novel – that is to say, what is “true” or “verifiable” – already exists somewhere in non-fictional sources: journals, letters, autobiographies, public records, and the like. They find little or nothing of documentary importance in fiction, however well or badly written. More often than not the historical parts are shot through with rumor, supposition, and invention. Therefore, they tend to dismiss historical fiction as irrelevant to their objectives and their craft and to come down especially hard on novelists who, not content to place their harmless tales in historical settings, have dared to claim a historical validity for their fictions”.<sup>22</sup>

Yet, White has argued for just this kind of imaginative reconstruction in works of history themselves:

In my view, history as a discipline is in bad shape today because it has lost sight of its origins in the literary imagination. In the interest of appearing scientific and objective, it has repressed and denied to itself its own greatest source of strength and renewal. By drawing historiography back once more to an intimate connection with its literary basis, we should not only be putting ourselves on guard against merely ideological distortions; we should be by way of arriving at that “theory” of history without which it cannot pass for a discipline at all.<sup>23</sup>

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<sup>21</sup> Daniel Aaron, “What can you learn from a historical novel?” p.56

<sup>22</sup> *ibid.*, p.59

<sup>23</sup> H. White, *Tropics of discourse*, p.99

At a deeper level, the question must be raised of whether *all* novels are historical novels. Georg Lukacs, historian and novelist, has claimed that “the kind of ‘historical novel’ that began with Scott and went on with Tolstoy, et al., is essentially a nineteenth-century genre, already outdated. Since American history is the history of a people, rather than a history of politics and rulers, American novels that we do not categorize as ‘historical novels’ tell us sometimes more than even the best political histories do. *The Great Gatsby* and *The Age of Innocence* are historical novels in that sense; that is why they ought to be assigned to students of American history”.<sup>24</sup>

John Demos, professor of history at Yale, agrees:

I’ve almost come to think that good novelists do better with at least some aspects of historical re-creation than “good” historians do. Two books come immediately to mind. William Styron’s *Confessions of Nat Turner* seems to me to convey the inner feel (for lack of a better term) of slavery better than any scholarly work I can think of... Why, I find myself asking, can’t we historians do as well? The answer may be that we customarily know more than we allow ourselves to say.<sup>25</sup>

The matter of “knowing more than we can allow ourselves to say” relates to the professional constraints of the historian who cannot depart from the substantive evidence. The historian must rely on deduction or analogy to judge motivation or attitudes, and must warn readers when the evidence is susceptible of variant interpretations.

Otto Friedrich has asserted:

Most great novels eventually become historical novels. In other words, *Barnaby Rudge* may be a novel about the Gordon riots, or *A Tale of Two Cities* about the French Revolution, but we tend to read Dickens because we find the Victorian attitudes congenial. Even *The Sun Also Rises* and *Tender is the Night* appeal to us partly as an evocation of the twenties as a bygone era.<sup>26</sup>

Allan Gurganus takes this assertion even further:

If the phrase “my autobiography” sounds redundant, then so – to my ear – does “historical novel”. Novels – from Jane Austen to Samuel Beckett – constitute histories, individual histories that accumulate to found one great aggregate human subject: history.

Nothing is so personal that it does not qualify as representing its own peculiar decade, its own evolving Age. Likewise, no movement or partisan cause is so epic in its maplike [sic] sweep that it cannot be rendered – thanks to novelists’ God-like obsession with detail – as particular, human, and nearly comprehensible.

Is it not fair to call Gibbon a great novelist? Is it not accurate to call Chekhov, Faulkner, and Toni Morrison great historians? All the fiction writers I love best seem to have saved not just the histories of individual people but the history of a place over time, which means, of course, history itself.<sup>27</sup>

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<sup>24</sup> Contribution to debate on “My favourite historical novel” in *American Heritage* 43, 6, 1992 pp.84-123.

<sup>25</sup> *idem.*

<sup>26</sup> *idem.*

<sup>27</sup> *idem.*

Aaron agrees:

All fiction is a kind of history writing; all historians and biographers, and autobiographers too, employ fictional devices; all storytellers, whether they think of the past as a visitable place, a usable cache loaded with analogues for their times, or an equivalent of a Hollywood spectacle, are affecting the way it is perceived. And how the past is perceived can influence the course of the history.<sup>28</sup>

What makes a “good” historical novel? Aaron speaks of such a novel exhibiting a historical sensibility, the ability “to reconstruct and inhabit a space in time past, to identify with it almost viscerally, feel it in their bones, and extract its essence”.<sup>29</sup>

In my novel, I tried to create a story consistent with what has been represented as fact, but without any other constraint. I wanted to incorporate such historical detail as was necessary into the plot, the characters and the locale without being caught up in historical minutiae. My protagonist had to possess enough of a nineteenth-century mindset to be believable without being incomprehensible to the modern reader. Thus, when I commenced this project I planned to write a work of historical fiction, attempting to imagine a plausible story into which I could weave those assertions about the man John Joseph which had been made in 1855. In the event, I found that the possibilities offered by the character and the exciting period in which he lived led me to write the novel as the first part of a planned trilogy which will take “Jonathan” Joseph back to his native land, participation in the underground railway and later in the American Civil War. I had Aaron’s warrant that “the House of History has many mansions”.<sup>30</sup> Without much thought of genre, and on the advice of my then supervisor, Rosaleen Love, I began to write the novel which accompanies this exegesis. I did not, therefore, start with the academic exercise of laying a firm hypothetical foundation to this project. In practice, the creative writing was concurrent with theoretical reading and study. My most important sources for the creative work are listed in the Resources chapter below.

I knew my hero had to engage the reader’s interest from the start. As Henry James wrote of Anthony Trollope, “character, in any sense in which we can get at it, is action, and action is plot, and any plot which hangs together... plays upon our emotions, our suspense by means of personal references. We care what happens to people only in proportion as we know what people are”.<sup>31</sup>

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<sup>28</sup> Daniel Aaron, “What can you learn from a historical novel?” p.63

<sup>29</sup> *ibid.*, p.60

<sup>30</sup> *ibid.*, p.65

<sup>31</sup> Quoted in Martin Price, *Forms of life: character and moral imagination in the novel*, New Haven, Yale University Press, 1983, p.xi

My first problem to resolve with writing the plot was deciding at what part in the hero's life to begin the story, at what stage to begin the revelation of his character. Having reached a decision, and commenced to write, I then made the painful discovery that creative writing for me was to be a continuous series of trials, errors, adjustments, changes, and redraftings. At no time in the project, for example, was the plot set in concrete, and changes such as the depiction of Jonathan as a free man of colour, whose mother had been freed by his father, were relatively easy to make, but required careful thinking through to adjust the continuity of the ensuing plot.

As this is a work of historical *FICTION*, the solution of most such problems was subject only to the writer's creativity; however, a great deal of thought went into the decision to start the tale in the house of the father of the hero, whose name I had decided to lengthen to Jonathan because it seemed to carry such American – even Yankee – associations and to be atypical of a slave of that era. Moreover, it seemed appropriate to give him a name with such biblical overtones of beloved sonship. The story is set in the context of a paradoxical and dysfunctional family in which Jonathan, whose mother was an African-American woman, was also his father's slave.

However, Jonathan had not been raised as most slaves were, but been pampered and, to some extent, favoured over his father's white, legitimate, younger son Allan. Having made the ensuing estrangement between the two half-brothers, I found that my initial attempts to write the story from the point of view of a disinterested narrator, in the third person, became untenable. I then switched the focus of the novel to the sole perspective of Jonathan, and wrote the novel in the first person, as Jonathan. While there are problems in writing in the first person, it left me free to narrate the story from the point of view of my hero. The particular difficulties as well as advantages in following through on that decision are discussed in greater detail below in Chapter 4 which deals with the ethical dimensions of writing this novel.

Having decided at what point to start the plot, I then removed the brothers from New Orleans and thence by way of boat through Panama to the goldfields of California, the crucible in which the flawed relationship of the half-brothers finally reached meltdown. In this context, I have adopted Sol Stein's use of the term "crucible" to mean:

a severe test which leads us to its use in plotting fiction. Author James Frey refers to a crucible as "the container that holds the characters together as things heat up". Characters caught in a crucible won't declare a truce and quit. They're in it till the end. The key to the crucible is that *the motivation of the characters to continue opposing each*

*other is greater than their motivation to run away.* [Author's emphasis.] Or they can't run away because they are in a prison cell, a lifeboat, an army, or a family.<sup>32</sup>

As the reader will see, I have used the plot to catapult Jonathan from one crucible to another, from New Orleans to San Francisco, and from San Francisco to Melbourne and the Victorian goldfields. In the course of his journey, he trudges, he sails, he cooks, he digs. He acquires new skills and sharpens old ones. However, his journey is not just physical; it has a moral and spiritual dimension too. So he makes friends and enemies, learns humility but nourishes anger. Within each crucible inhabited by Jonathan, other characters may change and disappear; however, Jonathan himself is continually being seared into maturity.

What of the characters I invented to act as Jonathan's foils? His father, while holding him in slavery even after manumitting his mother, is an affectionate and to some degree protective parent, given the nature of the society in which they live and the changes being forced upon it by the despised *Americains*. Allan is clearly estranged from both his father and his half-brother, and Jonathan just as clearly considers him to be an oafish, uncultured example of such *Americains*, in every way inferior to himself. I was anxious not to make Allan a cardboard figure. His resentment is understandable, given the ongoing pain caused to his American mother by the longstanding affair between her husband and Jonathan's black mother. Moreover, he has enough self-knowledge to be aware that his elder brother is smarter, more capable and more attractive than he, and in a fairer world would naturally expect to inherit the administration and income of the family estates.

Mary Ellen is based on a real woman, Mary Ellen ("Mammy") Pleasant.<sup>33</sup> There are relatively few women characters in the novel, mainly because most of the action takes place on the goldfields of two continents where women were scarce. Mary Ellen's purpose in the plot is to establish the fact that just as Jonathan appreciates and enjoys the company of women, he is equally attractive to them, with the conspicuous exception of the openly racist Mrs. Cranston whom he encounters on the voyage to Australia. Mary Ellen not only stands out in an overwhelmingly male cast of characters, but also serves to underline the fact that black women, as well as men, were leaders in the resistance to their enslavement.

Jonathan's friendship with Sam was required to reveal to the reader the hero's ambivalence. That is, having been educated in France, and raised by a somewhat indulgent

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<sup>32</sup> S. Stein, *Solutions for writers: practical craft techniques for fiction and non-fiction*, London, Souvenir Press, 1998, p.94.

<sup>33</sup> See Helen Holdredge, *Mammy Pleasant*, New York, Putnam, 1953, for an account of a life that is as colourful as any in fiction.

father in a cultured environment, Jonathan appears to think more as a white Frenchman than a black American slave. Sam plays a very important role of pointing out to Jonathan the grim realities of life as an African-American and the extent of his self-delusion. A black man traveling around the world without the protection of a white Cajun father is forced to come to terms with the reality of his skin colour.

Pierre is also based loosely on a real person, the goldfields photographer, Antoine Fauchery. Many of the other minor characters are also based on people who actually existed. For example, there *was* a French priest in Heidelberg, Victoria, during the gold rush; however, little is known about him other than the fact of his existence.<sup>34</sup> Likewise, the French consul and his beautiful but scandalous wife did live in Melbourne during this period, and were much as described in the novel.<sup>35</sup>

Eddy Thonen, a Prussian Jew, was one of the heroes of the Eureka Stockade and died in defence of the miners' flag. Whether or not he knew the real John Joseph will never be certain. However, as they both appear in the directories of the time as lemonade sellers on the Ballarat field, it is quite possible that they were acquainted with each other. Their friendship and partnership, as I have portrayed it, is entirely fictional. While Jonathan's co-accused are all as the court records describe them, the nature of his relationship with them is entirely fictional. Jonathan's legal team was just as gifted and dedicated as I have represented them in the novel. The degree to which I have departed from the historical record and the ethical implications of this will be discussed more fully elsewhere in this exegesis.

I set out to write a novel that incorporated all of the facts that I knew about the real John Joseph. I was conscious of William Styron's warning that "a bad historical novel often leaves the impression of a hopelessly over-furnished house, cluttered with facts the author wishes to show off as fruits of his diligent research".<sup>36</sup> I was also aware that, as Walter Sullivan maintains, "most novelists... know that facts alone do not constitute truth, that truth is an order that exists within the facts and must be discovered".<sup>37</sup> I therefore sought to place these facts in the context of men's lives which were not solely dedicated to political or constitutional reforms. I wanted to use my knowledge of the past and of fully rounded characters living physical, mental, spiritual lives and fashion them into an

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<sup>34</sup> Cyril Cummins, ed., *Heidelberg since 1836: a pictorial history*, Heidelberg Historical Society, 1971.

<sup>35</sup> See *The French consul's wife: memoirs of Céleste de Chabrilan in gold-rush Australia*, translation, with introduction and notes, by Patricia Clancy and Jeanne Allen of *Un deuil au bout du monde* (1877), Carlton, MUP, 1998.

<sup>36</sup> W. Styron, "Nat Turner revisited" *American Heritage* 43, 6, 1992, p.68

interesting and plausible story. Thus, from the writer's own interest in creation spirituality, arose a parallel interest by his protagonist in matters spiritual, his personal growth forming part of the character development inherent in a Bildungsroman.

It was my desire to test the practicability of creation spirituality as preached by Meister Eckhart seven centuries ago in the crucible of Jonathan's experiences.

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<sup>37</sup> W. Sullivan, "The novelist as historian" in J. Kennedy and D. Fogel, *American Letters and the Historical Consciousness*, Baton Rouge, Louisiana State University Press, 1987, p.231

## CHAPTER TWO

### THE NOVEL AND MEISTER ECKHART'S CREATION SPIRITUALITY

As I have already stated, my primary objective in the creation of a hero for this novel was to avoid stereotypes; consequently, I have attempted to portray Jonathan as a man in the process of discovering his spiritual identity. Like many African-Americans from New Orleans, and as the son of a Cajun father, Jonathan is nominally Catholic. At the beginning of the novel he is totally uninterested in spiritual or religious matters: indeed, he is fully occupied with coming to terms with the fact that he is black, and with the impact of the colour of his skin on his familial relationships with both his father and his half-brother Allan. The story then follows his travels into a wider world, and his intellectual and psychological coming to terms with his blackness. I also attempted to include his alienation, which he particularly feels in California. Anyone with such a hierarchy of needs would, I contend, move through the more basic levels of obtaining food and shelter, through the requirements of remaining alive and at liberty, before considering spiritual concerns.

Very soon after his voyage begins, the aggression of Allan and his friends, and the insights of Sam and Mary-Ellen, continue the process of shattering Jonathan's old, familiar and comfortable world. He is unsure of himself in these new relationships, but he is willing to accept change. In Mary-Ellen's case he positively embraces it. While the negative experiences of his more worldly-wise new friends lead them to encourage him to make an immediate break with Allan, Jonathan continues to try to come to some sort of *rapprochement* with his half-brother. He is unable to win any affection from Allan, and Jonathan himself, no doubt, is partly to blame for the ultimate failure of their relationship. Even before he leaves Allan, Jonathan had discovered how easy it is to be accepted by other African-Americans in San Francisco.

Jonathan supports the runaway slave William, and the courtroom scene in the novel as well as the judge's decision are based on fact.<sup>38</sup> For Jonathan the courtroom victory is bittersweet, and he is forced to take account of the very real danger of his being kidnapped and sold into slavery by Allan and his friends.<sup>39</sup>

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<sup>38</sup> R. Lapp, *Blacks in Gold Rush California*, New Haven, Yale University Press, 1977.

<sup>39</sup> For discussion of the problem of the kidnapping of African-Americans, sometimes by related "free people of colour" see Phillip Burnham, "Selling Poor Steven", *American Heritage*, Feb-March 1993,



It is only in Australia, on the highway to the gold fields at Ballarat, that Jonathan encounters a spiritual mentor, Father Lucien. It is at this point that an important sub-plot describing Jonathan's spiritual quest is introduced. Reluctantly, perhaps like many young men, Jonathan finds himself increasingly drawn to the mysticism of his mentor, and begins his first stumbling steps on the spiritual way described and preached about by the medieval priest, Meister Eckhart. Like many so-called "people of colour", Jonathan liked what he found in Australia; like them he found a country in which they could move about freely, and live unfettered by slavery. Historians of the goldrush era describe how many African-Americans and West Indians became successful miners; for example, a group of "five black Americans at Mount Alexander sank forty feet and 'took out at nearly one sweep' 187 ounces [of gold], selling their claim the next day for £200 cash".<sup>40</sup>

How feasible is the spiritual element of the plot of my novel? Could the characters I introduced into Jonathan's narrative have lived and acted as I have created them?

Both Antoine Fauchery and local histories reveal that there was a French priest at Heidelberg, Victoria, during the 1840s. Father Lucien is a fictional character based on this Frenchman. That part of Fr. Lucien's history in which he was a professor at the University of Paris is entirely fictional. So it might be argued that as at least one French clergyman acted as a parish priest in Victoria around the time of the gold rush, a man such as Fr. Lucien might well have befriended Jonathan.

There are a number of reasons why Jonathan may have become interested in the theology of Meister Eckhart. Like Jonathan, this German monk spent a considerable period of his life in Paris. In about 1293 Eckhart was selected for the great honour of teaching at the University of Paris for a little over a year. Then around 1300 he was recalled by the same university to return to Paris, where he was appointed to the chair of theology set aside to be occupied by eminent foreign theologians, teachers or preachers of the time. Such renowned theologians as Thomas Aquinas and Albert the Great had held the chair before Eckhart. Like Thomas Aquinas before him, part of Eckhart's teaching had doubt cast upon it during the cut and thrust of the debate in the university. However, again like Aquinas, even with the suspicion that some elements of his teaching and preaching may have contained error, Eckhart was recalled to teach once more at the

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v.44, n. 1, p. 90; also Daniel Meaders, "Kidnapping blacks in Philadelphia: Isaac Hopper's Tales of Oppression", *The Journal of Negro History*, Spring 1995, v. 80, n. 2, p. 47; and Mark F. Fernandez, "Freedom at Risk: The Kidnapping of Free Blacks in America, 1780-1865", *The Mississippi Quarterly*, Winter 1995, v. 49, n.1, p.170.

<sup>40</sup> E. Daniel Potts and Annette Potts, *Young America and Australian Gold: Americans and the Gold Rush of the 1850s*, St. Lucia, University of Queensland Press, 1974, p.57

University of Paris for a third time, from 1311 to 1313.<sup>41</sup> By 1314 the Dominican teacher and theologian had returned to his native Germany, where he took up the duties of preacher, prior and professor at Strassburg, then Cologne.

In those cities, during his lifetime there was an upsurge in mystical religion; for example, there were a number of lay religious movements actively involved in this mystical revival. One such movement was the women's group called Beguines, who had several establishments in the areas in which Eckhart carried out his religious duties. The religious revival and formation of such groups formed part of the movement known today as 'Rhineland mysticism', not entirely welcomed or endorsed by the church hierarchy of the day.

Following Eckhart's final return to Germany he was given pastoral duties, which were at a senior level. Eckhart believed in, preached and taught some highly contentious theology; furthermore, he most likely acted as a religious counselor to groups like the Beguines, and insisted in teaching and preaching in his emergent native language, German, rather than Latin. Such behaviour brought him to the attention of the hierarchy, among whom was the aristocratic Franciscan Archbishop of Cologne,<sup>42</sup> who, in 1326 brought Eckhart to trial on heresy charges. At his trial he was found guilty, but insisted upon his right to appeal to a papal court, and his appeal was granted.<sup>43</sup>

Eckhart's papal trial took place circa 1329, and he once more defended himself; however, this appears to have worked against the elderly theologian. Indeed, he appears to have been so self confident that he represented himself at his trials in both Cologne and Avignon.<sup>44</sup> In any event most commentators agree that he did not impress his inquisitors at either trial. As one translator speculates "the only real consensus among students of Eckhart is that he is not an easy author to read".<sup>45</sup> Neither does he appear to have suffered fools gladly, for in the documents related to his defense, he asserts that the accusations provided by the Archbishop of Cologne to the Commissioners who were to sit in judgement of him "proceeds from a false and an evil root and stem"<sup>46</sup>. In the conclusion of his defense he perhaps injudiciously charges his accusers of "ignorance and stupidity...[for] the first mistake they make is that they think that everything they do not

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<sup>41</sup> Matthew Fox, *Breakthrough: Meister Eckhart's Creation Spirituality in New Translation*, New York, Doubleday, 1980, p. 19

<sup>42</sup> *ibid.*, p. 21

<sup>43</sup> *idem.*

<sup>44</sup> *Meister Eckhart: The Essential Sermons, Commentaries, Treatises, and Defense*, trans. and introduction by Edmund Colledge, O.S.A. and Bernard McGinn, New York, Paulist Press, 1981, p. 11, hereafter cited as Colledge

<sup>45</sup> *ibid.*, p.24

understand is an error and that every error is a heresy”<sup>47</sup>. This outspokenness and inflexibility of Eckhart, as well as the well-known imprecise and abbreviated methods of investigation by contemporary Commissioners in heresy trials, did not auger well for Eckhart’s ultimate judgement by the Commission.<sup>48</sup>

Unaware of the court’s findings, he left Avignon to return home to await his fate; however, he died somewhere along the way home to Germany. Following his death some twenty-six of his propositions were condemned as heretical. In the papal Bull *In Argo Dominico*, delivered by John XXII on March 27, 1329, condemning him, it was noted that before his death Eckhart recanted these articles.<sup>49</sup> Since his death Eckhart’s theology has generated considerable discussion. While Eckhart may have been condemned for heresy, theologians from Suso, Tauler, and Nicholas of Cusa found inspiration in his beliefs, and by the sixteenth century an obscure German monk called Martin Luther based much of his theology on foundations built by Eckhart.<sup>50</sup> Fox lists other thinkers and mystics including St. Paul of the Cross, Loyola and Hegel. Also listed are more modern philosophers, such as Marx, Fromm and Bloch.<sup>51</sup> In addition, Fox asserts the similarity of Eckhart’s theology to Asian religions, citing the comment of Thomas Merton that “whatever Zen may be, however you define it, it is somewhere there in Eckhart”.<sup>52</sup> Even Jung is quoted as stating “the art of letting things happen, action through non-action, letting go of oneself, as taught by Meister Eckhart, became for me the key to opening the door to the way. We must be able to let things happen in the psyche.”<sup>53</sup>

What, then, were some of the contentious beliefs which led to the judgement of heresy on one hand, and yet have been drawn upon by scholars, mystics, and philosophers since the fourteenth century? Furthermore, what is Eckhart’s relevance to the sub-plot of the spiritual quest of the hero of my novel?

I have noted above Colledge’s comment that Eckhart is not an easy writer to understand, and if such were the case in his own era, it is even more so to us today. Many

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<sup>46</sup> *ibid.*, p. 71

<sup>47</sup> *ibid.*, p. 75

<sup>48</sup> For detailed descriptions and commentary on Eckhart’s trial see, Colledge, pp. 71 – 81; G. Thery, “Édition critique des pièces relatives au procès d’Eckhart continues dans la manuscrit 33b de la Bibliothèque de Soest,” *Archives d’histoire doctrinale et littéraire du moyen âge* 1, (1926), pp.129-268; F. Pelster, “Ein Gutachten aus dem Eckhart-Prozess in Avignon,” *Festschrift Martin Grabmann*, Munich, 1935, pp.1099-1124; M.-H. Laurent, “Autour du procès de Maître Eckhart: les documents des Archives Vaticanes,” *Divus Thomas* 39, (1936), pp. 331-348, 430-447

<sup>49</sup> Matthew Fox, *op. cit.* p. 23; Colledge, *op. cit.*, p. 81

<sup>50</sup> *ibid.*, p.1

<sup>51</sup> For the entire impressive list see *ibid.*, pp. 1-3

<sup>52</sup> *ibid.*, p.2

<sup>53</sup> Quoted in *ibid.*, pp 2-3

struggle to understand scholasticism, with its associated methodologies and ways of seeing the world. It is therefore fortunate that Matthew Fox, once Dominican priest and scholar, and now Anglican priest, has translated over thirty-seven of Eckhart's sermons and treatises, and, to enlighten the modern reader, has added a commentary to each.<sup>54</sup> Fox, himself a graduate of the Institut Catholique de Paris, whose field there was the history of theology, is one of the leaders of the movement known as Creation Spirituality. To make the insights of Eckhart and other Rhineland mystics accessible to the modern reader, Fox has imposed a theological framework drawn from Creation Spirituality on their work. This framework implies a paradigm shift from that which the various Christian denominations have used, and which de-emphasises the "fall/redemption spiritual motif", in favour of "that of blessing/creation".<sup>55</sup>

An analysis of Eckhart's theology from a Creation Spirituality perspective describes four different pathways to spiritual enlightenment. These pathways are not linear and one may experience more than one pathway at a time. Each pathway calls attention to a number of basic tenets. The first of these is realized eschatology – that is "that eternal life begins in the present life".<sup>56</sup> Thus Jonathan becomes increasingly reliant on Eckhart's teachings during his imprisonment following his arrest at Eureka. In his powerlessness, he realizes that it is as important to be as it is to do. He learns to embrace the darkness, which ultimately for him means embracing his own darkness - a literal, as well as metaphorical blackness.

The second tenet is panentheism – that all beings are created by God and live united in a spiritual relationship with Him/Her, or as Eckhart frequently stressed in his sermons and other writings, "God is in us and we are in God". One should be aware that he was not a pantheist and therefore totally rejected the notion that we are all gods. It is worth stressing that the commissioners who examined Eckhart were unable to grasp this essential difference, going so far as changing Eckhart's texts such as "everything that is in God is God" to "everything that is, is God". The tenets of realised eschatology and panentheism were used by Eckhart to support his teachings on the holiness of all human beings and their status as children of God. According to Fox, Eckhart portrays Christ

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<sup>54</sup> *ibid.*

<sup>55</sup> Matthew Fox, O.P. "Introduction", Matthew Fox, O.P., ed., *Western Spirituality: Historical Roots, Ecumenical Routes*, Santa Fe, Bear, 1981, pp. 2-3

<sup>56</sup> Matthew Fox, "Meister Eckhart on the Fourfold Path of a Creation – Centred Spiritual Journey", Matthew Fox, ed., *Western Spirituality: Historical Roots, Ecumenical Routes*, Santa Fe, Bear, 1981, p.217

more as a Reminder of humanity's holiness, than as a Redeemer from its sinfulness.<sup>57</sup> Such teaching, with its more positive approach to human weakness and its conviction of essential human goodness, appeals to a worldly young sophisticate like Jonathan. Furthermore, a man reviled and rejected by his own brother, and held in slavery, albeit for his own protection, by his father, would be empowered by such teaching.

The spiritual path taught by Eckhart first stresses the blessing of God's grace as revealed in creation. Eckhart did not consider that God's act of creation was completed in a week, but emphasized that it was ongoing and eternal. Thus, as Fox explains, "the purpose of spiritual journeying is to re-enter the blessing that all creation is about on the one hand, and to bless creation and others of the human community on the other."<sup>58</sup> In his sermons on creation, Eckhart utilized themes such as "all creatures are words of God"; and explained how humanity flowed out from God in a continuous birthing. Hence, all creatures are equal in holiness and thus every individual should be encouraged to wake up to such spiritual realities revealed in creation. Jonathan's exile, first within his own country and then in Tahiti and Australia, exposes him, not only to new kinds of relationships with people very different from those he experienced before, but also to very different physical environments, different seasons, different flora and fauna. He begins to see his world as a new creation in which he participates, even as he enacts it.

The second path explores the hidden, internal darkness and mystery implicit in the first path. Fox explains this complex and demanding quest thus:

In addition to the experience of God in creation, a way of exteriority, Eckhart preaches the way of interiority or the birth of God in the soul of the individual...We ought to ask the question Who needs it? If creation is so full of God, if panentheism is real, why should a way of interiority be necessary at all? Eckhart's answer would be, I think, something like this: "If you think your joy was full from the grace of creation, you haven't seen anything yet! There is much more to come."<sup>59</sup>

This second path comprises a radical exploration of Christian mysticism and in these sermons Eckhart's congregations were exhorted to forsake all of their preconceived notions about the nature and attributes of God and the Godhead. Believers were encouraged to forsake their own will, intellect and knowledge to have them enriched in the darkness and silence of the presence of God. This, too, has relevance for Jonathan in the

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<sup>57</sup> *ibid.*, p.218-219

<sup>58</sup> Matthew Fox, *Breakthrough: Meister Eckhart's Creation Spirituality in New Translation*, New York, Doubleday, 1980, p.55 Note that panentheism is not the same as pantheism. Panentheism means that God is *IN* all things, while pantheism means that God *IS* all things.

<sup>59</sup> Matthew Fox, "Meister Eckhart on the Fourfold Path of a Creation – Centred Spiritual Journey", Matthew Fox, ed., *Western Spirituality: Historical Roots, Ecumenical Routes*, Santa Fe, Bear, 1981, pp.224-225

loss of his friend Eddy and in his incarceration in Ballarat and Melbourne. In a situation where a natural reaction might be to protest at the injustice of it all, his only hope of evading the noose is to hold his tongue and conceal his education and intelligence. The lesson he has learned from Eckhart to let go and let be, becomes a mechanism for survival. Paradoxically, unlike Eckhart, Jonathan cannot afford to vent his spleen or thumb his nose at his false accusers, but, then, unlike Eckhart, Jonathan escapes condemnation. Matthew Fox has speculated that Eckhart may have found some humour in his condemnation, explaining it as follows: “in Sermon Twenty-four, he said: ‘Even if God should ordain one’s condemnation so that one’s existence would not be violated, even then the person should let God take over as if it did not matter, as if one did not exist’. I wonder if Eckhart did not decide to let go of life having lived a full one. And whether he decided that they would – quite literally – condemn him over his own dead body. Since laughter is surely as profound an expression of letting go as there is, then Eckhart probably died laughing.”

Path three involves a breakthrough. Fox describes it thus. “When one lets go, and thereby overcomes, subject/object relationships, even between God and people, a new and deeper union between God and people occurs. Eckhart coined a word for this occurrence, *Durchbruch*, or Breakthrough. The grace of Breakthrough is even greater than the grace of creation.”<sup>60</sup> This path in particular explains a new relationship between people and God which confers special status on all human beings. For example, sermons concerning breakthrough stress themes such as “Our divinity and God’s divinity”; and “That we are both children and parents of God”. In one sermon, Eckhart asserts that “we are other Christs”.<sup>61</sup>

In the final path Eckhart seeks to explain some of the ways in which breakthrough should bear fruit in the life of the believer. For example, one sermon charges his listeners to “be compassionate as your Creator in Heaven is compassionate”. In another, he stresses that justice is the work of compassion. He claims in yet another sermon that compassion is an ocean, and goes on to describe the mystical dimensions of it. In a sublime treatise on the Lord’s Prayer he stresses the corporate nature of every petition in the prayer, then reminds his audience that “bread is given us for others, on account of others, and with others – especially the indigent”.<sup>62</sup> Surely Jonathan - even espousing convictions about non-violence - would have joined his fellow diggers in their pledge to stand by each other.

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<sup>60</sup> *ibid.*, p.234

<sup>61</sup> Matthew Fox, *Breakthrough: Meister Eckhart’s Creation Spirituality in New Translation*, New York, Doubleday, 1980, pp.338-345

<sup>62</sup> *ibid.*, p.xix

It is ironic that a man believing in moral suasion should have been caught up in a movement which he himself had forecast would ultimately be forced to resort to arms. Yet, the validity of the diggers' pursuit of justice convinces him to join them in their efforts to defend themselves, if not to be actively aggressive in pursuit of their rights. Thus Jonathan has compassion for his mates and chooses to share his bread with them while at the same time accepting that which they share with him. Yet another example is Jonathan's generosity to Sam and forethought for his safety, in spite of the breakdown of their relationship. He has come a long way from the Jonathan we first knew, whose concern was only for himself and for the injuries done to him.

It is on the journey to compassion that Eckhart devotes an entire and lengthy message entitled "Everyone an aristocrat, everyone a royal person"<sup>63</sup>. The implication of equality may have been overlooked by some of Eckhart's audience, but to a man such as the fictional Jonathan they would be as obvious as they were welcome. Jonathan at first derives his self-esteem from his undoubted accomplishments, good looks and intelligence. He feels superior to his brother and hence more bitter at the accident of birth and the injustice which denies him the place in society which would otherwise be his birthright. Influenced by Father Lucien and his reading of Meister Eckhart, as well as the practical example of his new friends, he comes to realize that his importance derives, not from his talents or his genealogy, but from his dignity as a human being, which makes him a royal person, just as it does his brother Allan.

And what of the actions of Chapman and Aspinall in his defence? Like a royal person, Jonathan was placed in a position of receiving benefits and gifts without charge. They, on the other hand, demonstrated the compassion and justice inspired by God even by flawed human beings. Yet neither Jonathan nor his friends, nor his legal advisors, act like wowsers. I feel sure Eckhart would have approved.

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<sup>63</sup> *ibid.*, p.510

## CHAPTER THREE

### RESOURCES

While writing the novel it was necessary to undertake a great deal of reading, hence this exegesis would be incomplete without a critical bibliography, concentrating on the resources drawn on for the creative writing alone. The resources to be discussed in this chapter fall into five thematic categories:

1. Primary historical sources;
2. Secondary historical sources;
3. Creative writing techniques;
4. Contemporary criticism and theory.

#### 1. Primary Historical Sources

For the purposes of this project, primary sources were deemed to be far more relevant when recounting the non-fictional parts of the story, than those secondary ones discussed below. The primary sources for this project are largely to be found in such personal texts as memoirs, letters, and diaries as well as official court documents and newspaper accounts.

The first such group of primary materials relate to north America; these are, in the main, eye witness accounts of life on the Californian gold fields. The Englishman, J. D. Borthwick, recorded his journey from New York to the Panama isthmus by sea, then by native dugout boat across the isthmus, and by sea again to San Francisco. He describes the events of this journey in great detail: a day and a night in the open dugout boat, during which he and twelve others suffered both tropical heat and torrential rain before arriving so late at the hotel at which they should have spent the night just in time to join “twenty or thirty fellow-travelers [sic], who had there enjoyed a night’s rest, and were now...sitting down to a breakfast ...of ham, beans, and eggs...”.<sup>64</sup> Borthwick’s portrayal of all aspects of the economic, political, and social life in California is lively, interesting and detailed, perhaps because his observations were those of a foreigner. For example, one sees the geographical features, as well as the flora and fauna of every area he visited, including the Panama region, through the eyes of a newcomer. He also noticed and commented on

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<sup>64</sup> J.D. Borthwick, *The Gold Hunters*, New York, International Fiction Library, 1917, p. 27.



interaction among such diverse ethnic groups as African-Americans, Chinese, and Native Americans, as well as white Americans and Europeans.

John Carr's *Pioneer Days in California*, Eureka, Ca., Times, 1891, is a similar work which in a rather bombastic and boastful style describes the author's transcontinental trek along the Oregon Trail. This account is less detailed than Borthwick's, but is interesting for what it reveals about the attitudes and responses of an American to the challenges of gold rush life. In addition to describing the Californian scene, Carr provides detailed information about his travels, and since he returned to the eastern United States by the isthmus route, he is able to compare that and the overland route he first followed.

The letters of a doctor's wife who travelled the isthmus route on several occasions also provide very useful social insights into San Francisco during the gold rush era. Mrs. Megquier encountered a wide range of lodgers in the boarding house which she owned, and in particular provides quite vivid descriptions of theatrical artists of the day. She wished, she informs her daughter, to see Lola Montes in *Charlotte Corday*, despite it not being "proper for respectable ladies to attend". She reports that a male friend commented that, in her rendition of the spider dance, Lola portrayed "the antics of one with a tarantula upon their person and some thought she was obliged to look rather higher than was proper in so public a place..."<sup>65</sup> Mrs. Megquier does not, however, tell her readers if she did or did not attend the notorious performance.

A similar work is the memoirs of Eugene Ring, which contain a detailed account of the voyage of a prospector from New York City to the California gold fields. Included in this volume are accounts of travel in Central and South America, which have been useful in providing 'colour' for my fictional account in the novel.

Primary source materials relating to the Victorian gold era and the Eureka Stockade are naturally available locally in greater numbers. A very helpful anthology edited by Nancy Keesing is a useful starting place for an overview of the range of Australian gold field narratives.<sup>66</sup> The sources on the Eureka Stockade, for example, range from the official reports of Sir Charles Hotham, Governor of Victoria, to accounts of such men as Raffaello Carboni, who fought as a digger, and, like his cellmate Joseph, was tried for High Treason. This anthology provides general material about the era, including information about the various migrant groups, and is a guide to the more detailed literature of the time. The work is also useful as a ready reference guide to many of the mundane events of the period. Another useful collection of official reports and documents relating to Chinese migrants is

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<sup>65</sup> Mary Jane Megquier, *Apron Full of Gold*, San Marino, Huntington Library, 1949, p. 80.

Ian F. McLaren's *The Chinese in Victoria*, Ascot Vale, Red Rooster Press, 1985. While many of the official documents post-date the period of this project, interesting insights contained in evidence before the various commissions reveal the attitudes of white diggers toward the Chinese. Of particular interest is the evidence of a type of mateship to be found in the Rules of the Chinese Society of Ballarat.<sup>67</sup>

There are many personal accounts of migrants who came to Australia. An early account by John Sherer records his journey from England to this country in great detail. It was at Bendigo that Sherer and his party struck gold, and he and his mates were wise enough to keep their discovery secret, while extracting enough gold to establish them for life in England.<sup>68</sup> Not so comprehensive is Clacy's account of gold field life, which she experienced as an eighteen-year-old English woman who accompanied her brother to Victoria. Her narrative includes descriptions of the Ballarat and Bendigo diggings, as well as Melbourne and Adelaide. This work provides helpful information about the revolutionary impact of the discovery of gold upon the economic and social life of a small colony.<sup>69</sup>

An important group of contemporary accounts were written as guides to prospective emigrants from Britain. *Philip's guide*, it seems to me, is more of interest for the author's attitudes which it discloses than for its practical use. For example, the author assures his reader that Australia is "no place for scientists or University Men".<sup>70</sup> He goes on to recommend the migrant take few books other than the Bible; "a book or two of constructive tales, should there be children, and if possible a few volumes of standard English literature, with a few lighter for the wife, will be quite sufficient".<sup>71</sup> Similar comments exhibit attitudes quite out of mode in modern times, and are thus of use to a writer seeking to recapture some of the atmosphere of one hundred and fifty years ago. Indeed, men holding such beliefs, and displaying the types of behaviour which stem from them, seem to be among those characters likely to appear 'larger than life' in the proposed novel. The lively and intriguing work of William Kelly<sup>72</sup> is filled with such *dramatis personae*. Few modern Australians would fail to recognise and barrack for the forerunner of the

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<sup>66</sup> Nancy Keesing, ed., *Gold Fever: Voices from Australian Goldfields*, North Ryde, Eden, 1967.

<sup>67</sup> Ian F. McLaren, *The Chinese in Victoria*, Ascot Vale, Red Rooster Press, 1985, pp. 45-49.

<sup>68</sup> John Sherer, *The Gold-Finder in Australia*, Ringwood, Penguin, 1973, pp. 313-318.

<sup>69</sup> Mrs. Charles Clacy, *A Lady's Visit to the Gold Diggings of Australia 1852-53*, London, Hurst and Blackett, 1853.

<sup>70</sup> D.J. Golding, ed. *The Emigrant's Guide to Australia in the Eighteen Fifties*, Melbourne, Hawthorn, 1973, p.19. (Actually written by John Capper, it was first published in 1856 as *Philip's emigrant's guide to Australia*.)

<sup>71</sup> *ibid.*, p. 21.

<sup>72</sup> William Kelly, *Life in Victoria*, Kilmore, Lowden, 1977.

stereotypical waterside worker who encountered a gentleman alighting from a steamship. Imagine the scene in which the new chum “stamped the loose mud from [his] nice boots” then “looking about with an air of ineffable horror, drawlingly accosted a bystander: “Tom, do you desire a job?” “What sort?” “Just to carry a carpet bag.” “Will it want two to take it?” “No.” “Then take it yourself,” was the cool reply...”<sup>73</sup> And so on, for two wonderful volumes. A similar encounter is included in my novel.

Seweryn Korzelinski’s narrative is a straightforward account of his Australian experiences, based on the diaries he kept while in this country. The work was translated from Polish into English by Stanley Robe and published in 1979.<sup>74</sup> This narrative is notable for its description of the rivalry between the Americans and British (or British colonials). The author describes the confrontation between the Bendigo committee of diggers and the local Gold Commissioner Panton, and the cool way in which the latter handled the difficult situation.<sup>75</sup> Korzelinski faced a difficult situation himself shortly after, for a group of fellow miners approached him to join the red ribbon movement, and to provide military leadership. The Pole, a Trotskyist before his time, had adopted a ‘no peace no war’ position, and when confronted with a dilemma similar to that of the Russian revolutionary, adopted a tactful but resolute stance by explaining that he could not forget the political shelter provided by Britain when he and other Poles were there in political exile.<sup>76</sup> This work sympathetically discusses the plight of Aboriginal people, reveals the economic hardships of the miners, and the pitfalls of running a store on the goldfields.

The Danish sailor who deserted his ship in Port Melbourne in 1854 to dig for gold has left another useful account of the voyage from Europe to Victoria, as well as a description of the efforts of one ship’s crew to coerce their captain into allowing his men to legally sign off the ship’s roster here.<sup>77</sup> Gronn recounts the triumphs, trials and tribulations of pioneer and mining life in Victoria, and provides information about his various livelihoods in mining, farming, shopkeeping and brewing. He does not cover the political and constitutional problems of the state, but concentrates on the economic and social lives of the settlers. The economic and political analysis of English Quaker William Howitt is a very comprehensive work, and proved to be not quite so dull as the title - *Land, Labour and Gold: or Two Years in Victoria* - might imply. While concentrating on economic and

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<sup>73</sup> *ibid.*, p. 33.

<sup>74</sup> Seweryn Korzelinski, *Memoirs of Gold-Digging in Australia*, trans. and ed. Stanley Robe, St. Lucia, University of Queensland, 1979.

<sup>75</sup> *ibid.*, pp. 99-101.

<sup>76</sup> *ibid.*, pp. 101-104.

<sup>77</sup> Claus Gronn, *Gold! Gold!* Melbourne, Hill of Content, 1981, pp. 51-53.

administrative matters, he nevertheless describes the colonial scene in great detail. For example, at Mount Alexander in May, 1854, he observes “swarms of commissioners, police officers, soldiers, grooms, constables and the like” in a township whose miners have already moved to richer areas miles away.<sup>78</sup> Insights such as this, and the portrayal of hordes of petty officials riding around festooned in gold lace apparently doing nothing, tends to corroborate the grievances voiced by the diggers themselves.

Many additional sources were read, and the newspapers which were published prior to the trials of the thirteen diggers strongly urged the Crown to declare an amnesty, and set the accused diggers free. Newspaper accounts of the treason trials were particularly scathing of the behaviour of Judge Sir Redmond Barry, who demonstrated his outrage at Joseph’s acquittal by imprisoning for contempt two innocent bystanders unwise enough to cheer the verdict. There was much newspaper comment upon the feting of Joseph by the Melbourne mob following his acquittal. Aspinall’s sister has written an account of the three years she and her brother spent in Melbourne, but does not mention her brother’s defence of Joseph.<sup>79</sup> A copy of the official court record of the trial of Joseph for treason was obtained, consulted and used in the chapters of the novel which describe his trial. The most important legal debates and interrogations were quoted *verbatim* from this source.

Nevertheless, as far as the character and personality of Joseph himself are concerned, I was in somewhat the same position as was William Styron when writing his novel on Nat Turner:

One of the benefits for me in Nat Turner’s story was not an abundance of historical material but, if anything, a scantiness. This was a drama that took place in a faraway backwater when information gathering was primitive. While it may be satisfying and advantageous for historians to feast on rich archival material, the writer of historical fiction is better off when past events have left him with short rations... Such a near vacuum seemed to me to be an advantage, placing me in the ideal position of knowing neither too much nor too little.<sup>80</sup>

The paradox from which I benefited was that, with so much legal material still available in State archives, and with so many other contemporary sources, the “real” John Joseph remains a cipher.

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<sup>78</sup> William Howitt, *Land, Labour and Gold: or Two Years in Victoria*, Kilmore, Lowden, 1972, p. 359.

<sup>79</sup> Clara Aspinall, *Three Years in Melbourne*, London, Booth, 1862.

## 2. Secondary Historical Sources

It is appropriate here to address in some detail the question of historical veracity in historical fiction. Michel de Certeau asserts that “the past is the fiction of the present”.<sup>81</sup> If that is so, then the question is moot. Foucault would have us believe that the historian can never be objective, and should not attempt to be so.<sup>82</sup> What role does the pursuit of truth then play in the writing of historical fiction? Foucault went on to assert that “I am well aware that I have never written anything but fictions”; that said, he claimed that his ‘fictions’ were not, however, without truth.<sup>83</sup> Thus while writers of the Foucault school ‘fiction’ their histories, fiction writers like Sharon Penman ‘faction’ theirs: Penman has pointed out that while “imagination is the heart of any novel, historical fiction needs a strong factual foundation...” Hence in her work on Richard III she explains she attempted “to rely upon contemporary chroniclers wherever I could, and when dealing with conflicting accounts, to choose the one most in accord with what we know of the people involved”.<sup>84</sup>

Fortunately, I am able to claim a similar privilege to Penman, for historical fiction remains that, though the author may attempt to deal as fairly and truthfully as possible with historical sources. Thus my telling of the John Joseph story imposes my interpretation on what little factual information I have about him. Because, then, this project is not a work of history, in which I seek to make historical claims based upon hypotheses, and subject to the usual rules, practices, tenets and proofs of historical methodologies, I have chosen to refrain from a detailed examination or use of secondary sources, unless they are particularly relevant to the creative aspects of this project.

John A. Ferguson’s *Bibliography of Australia*, Canberra, National Library of Australia, 1975 - 1977 was an essential starting point for this research, and a secondary source. A work which serves a number of useful purposes, from a guide to the official documents in the Victoria Public Records Office, as well as a secondary source is Ian MacFarlane’s *Eureka from the Official Records*,<sup>85</sup> which has some references to Joseph, as well as the other protagonists of Eureka. This work is an essential first stage of a detailed examination of the official documents, including, for example, the report of the trial. Another secondary source which was indispensable was *Historical Studies: Eureka Supplement*, Melbourne

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<sup>80</sup> W. Styron, “Nat Turner revisited”, p.68

<sup>81</sup> Michel de Certeau, *The Writing of History*, p. 10

<sup>82</sup> Michel Foucault, ‘Nietzsche, Genealogy and History’ in Paul Rabinow (ed.), *The Foucault Reader*, p.90

<sup>83</sup> Michel Foucault, *Power/Knowledge*, p. 193

<sup>84</sup> Sharon Penman, *The Sunne in Splendour*, Ringwood, Penguin, 1982. p. 883.

University Press, 1954. Articles in this supplement which were of particular use included Hume Dow, "Eureka and the Creative Writer"; John A. Freely, "With the *Argus* to Eureka"; L. G. Churchward, "Americans and Other Foreigners at Eureka"; and R. D. Walshe "Bibliography of Eureka". Another essential secondary source is E. Daniel Potts and Annette Potts, *Young America and Australian Gold: Americans and the Gold Rush of the 1850's*, St. Lucia, University of Queensland Press, 1974. This book provides useful information about North Americans, from consuls to merchants and traders, as well as miners and other workers who took up residence in this country. Of particular use are the references to the African-American subculture, as well as information concerning John Joseph. The authors' insights into the paradoxical matter of respect for people of "colour" as opposed to the general mistreatment of aboriginal people are also useful. Jean Gittins, *The Diggers from China*, Melbourne, Quartet, 1981, is a chatty, informal but very informative account of Chinese who came to the goldfields.

Other secondary sources included the brief biography of Hotham by Shirley Roberts, which sheds some light on the events leading up to the Eureka uprising, and a two page section dealing with the treason trials which, surprisingly, does not specifically refer to Joseph.<sup>86</sup> On the other hand, Currey's *The Irish at Eureka* has several references to Joseph,<sup>87</sup> as well as a copy of an illustration taken from the *Melbourne Age* showing Joseph among the thirteen indicted for treason.<sup>88</sup>

Secondary sources relating to the lives of slaves in the United States comprised another important category of secondary source literature. Rudolph M. Lapp's "The Negro in Gold Rush California" *Journal of Negro History* 49 (April, 1964): 81 - 98, and his much expanded monograph of this article, *Blacks in Gold Rush California*, New Haven, Yale UP, 1977 were key sources. These works are invaluable for their coverage of virtually every aspect of African-American life in the Gold Rush era: there is extensive coverage of the experiences of slaves brought to California, and their attempts at legal and social emancipation and recognition. Their slow evolution into a free sub-culture, and their early attempts to establish economically viable businesses and enterprises are dealt with in detail. Other important aspects of their social life are discussed, including cultural relationships with other ethnic communities, such as native American, Latino and Orientals, and the question of intermarriage between these ethnic groups are covered in detail. Hubert H.

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<sup>85</sup> Ian MacFarlane (Ed), *Eureka from the Official Records*, Melbourne, PRO, 1995.

<sup>86</sup> Shirley Roberts, *Charles Hotham: A Biography*, Melbourne, UP, 1985, pp. 162-164.

<sup>87</sup> C.H. Currey, *The Irish at Eureka*, Melbourne, Angus and Robertson, 1954, pp. 5, 74, 76.

<sup>88</sup> *ibid.*, facing p. 57.

Bancroft's *History of California*, vol. vi, 1848-1859, Santa Barbara, Hebbard, 1970, is an important basic history of the period.

### 3. Guides to Creative Writing

Sources that proved essential were those which might be categorised as 'hands on' guides to creative writing. Gabriele Rico's *Writing the Natural Way*,<sup>89</sup> while somewhat dated, is a helpful, general guide aimed at enhancing the writer's creative powers by the use of such techniques as 'clustering', or brainstorming, 'recurrence' - or pattern recognition applied to the output of clustering. Other techniques include the uses of 'creative tension' to enhance vitality of style through the juxtaposition of opposing images, and the uses of rigorous revision. This work was of most use in addressing the psychological, attitudinal, and motivational needs of writers.

An emerging trend in many works for creative writers is the impact of fiction writing techniques and non-fiction resulting in the emergence of the so-called "literature of fact". An introductory but dated source was Zinsser's *On Writing Well: An Informal Guide to Writing Non-fiction*, was too general for detailed use. Norman Sims' *Literary Journalism in the Twentieth Century* aims to give insight into how "literary journalists... reshaped literary styles to permit passages between fact and fiction, journalism and autobiography, and reporting and sociology in such a way that their readers' expectations and confidences were not violated".<sup>90</sup> Part 1 of this work is a review of the literature from 1900 to 1960, Part 2 examines the shifting demarcation line between literature and journalism, and Part 3 provides useful examples of literary journalism and autobiography. A similar work, though more firmly based in literary criticism, is Shelley Fisher Fishkin's *From Fact to Fiction*, a critical analysis of the work of several American writers who moved from journalism to fiction writing - including Walt Whitman, Mark Twain, Theodore Dreiser, and Ernest Hemingway.<sup>91</sup>

Of much more specific and practical use was Cheney's *Writing Creative Non-Fiction*.<sup>92</sup> Samples of the work of many writers - George Orwell, Tom Wolfe, and Gay Talese, for example - are analysed *in detail* by Cheney to show how such authors draw on ways of writing fiction to produce more stimulating, and exciting non-fiction. Cheney

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<sup>89</sup> Gabriele Lusser Rico, *Writing the Natural Way: Using Right-Brain Techniques to Release Your Expressive Powers*, Los Angeles, Tarcher, 1983.

<sup>90</sup> Norman Sims, *Literary Journalism in the Twentieth Century*, New York, Oxford UP, 1990, p. vi.

<sup>91</sup> Shelley Fisher Fishkin, *From Fact to Fiction Journalism and Imaginative Writing in America*, Baltimore, Johns Hopkins, 1985.

<sup>92</sup> Theodore A Rees Cheney, *Writing Creative Fiction*, Berkeley, Ten Speed, 1991.

covers in detail the problem areas for writers of both fiction and non-fiction. For example, he distinguishes between the “Dramatic (or Scenic)” and “Summary (or Narrative)” styles of storytelling.<sup>93</sup> Examples of the former are used to create vivid and interesting opening scenes that ‘hook’ their readers’ interest from the beginning. This technique appears easier than it is in practice, or I found it to be so. The main problem for this writer was its impact on the composition of dialogue. Because narrative is kept to a minimum, the only avenue to reveal facts about character and plot is through dialogue; however, much of the information to be conveyed through dialogue, while essential for the reader to know, is of such basic knowledge to the protagonists in a scene to appear insincere or stilted and thus inappropriate as dialogue. Hence, when using manuals such as Cheney’s, it is necessary continually to redraft completed sections of a work.

This book addresses many such problem areas for writers, and each such domain may take the user some time to work through to improve by repeated drafts. For example, Cheney discusses innovative ways in which characters may be developed “by showing a character in different situations and letting us note how he or she behaves - and what he or she says”.<sup>94</sup> Such an approach removes the tedium of writing and reading narrative about the thoughts of characters.

Albert Zuckerman, literary agent to such successful writers as Ken Follett, has also written a practical, formula style guide for novelists.<sup>95</sup> This work stresses the importance of drafting and continually revising outlines, and uses a novel of Follet’s as an example to good effect.<sup>96</sup> Zuckerman takes his readers through four drafts of the novel, written over an eight-month period, to demonstrate the changes between a fuzzy first draft, and a more focussed and coherent fourth. He also has good advice on such topics as revealing the motivation of characters, in order to involve and make one’s readers empathise with the protagonists one creates. Zuckerman emphasises the need for writers to reveal “what it is that the character wants, dreams of for the future, for the rest of his life, or at least for the time span of the story”.<sup>97</sup>

This project is a work of fiction and as indicated above requires that essential element of any successful work of fiction which is, as Zuckerman claims, “larger than life characters”<sup>98</sup>. So I began to search for a larger than life hero.

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<sup>93</sup> *ibid.*, p. 9.

<sup>94</sup> *ibid.*, p. 127.

<sup>95</sup> Albert Zuckerman, *Writing the Blockbuster Novel*, London, Little, Brown, 1994.

<sup>96</sup> Ken Follett, *The Man From St. Petersburg*, London,

<sup>97</sup> Albert Zuckerman, *op. cit.*, p.119.

<sup>98</sup> *ibid.*, p.118.



In his seminal work on heroes, Joseph Campbell suggests that the modern hero must be one who can fashion spiritual meaning and maturity out of modern civilisation, transcending factionalism or nationalism. As Campbell points out “the community today is the planet”.<sup>99</sup> In this global battleground, old allegiances, religions, races or nations which once represented the ‘good’ may now be considered ‘evil’. Indeed, Campbell asserts, the modern hero is an individual who “cannot, indeed must not, wait for his community to cast off its slough of pride, fear, rationalised avarice, and sanctified misunderstanding...[for] it is not society that is to guide and save the creative hero, but precisely the reverse...in the silences of his personal despair”.<sup>100</sup> We know little about John Joseph other than that he was an African-American gold miner in Victoria, lemonade (sly-grog?) salesman, rebel, prisoner, and arraigned traitor. From my point of view, this lack of information gave me the freedom to recreate him in fiction in any way I saw fit, and therefore he is capable of being formed into a modern hero in Campbell’s terms.

His quest leads him to a place of exile. “Both geographical and moral, exile is the manner in which impassioned individuals...learn to cope with their instincts once the protective shell of their rural communities, paternal dominance, and traditional wisdom no long obtain.”<sup>101</sup> Like many another hero, he must leave his native shore to find himself. Yet this course has its perils:

From the standpoint of the way of duty, anyone in exile from the community is a nothing. From the other point of view, however, this exile is the first step of the quest. Each carries within himself the all: therefore it may be sought and discovered within. The differentiations of sex, age, and occupation are not essential to our character, but mere costumes which we wear for a time on the stage of the world. The image of man within is not to be confounded with the garments...Such designations do not tell us what it is to be man, they denote only the accidents of geography, birth-date and income. What is the core of us? What is the basic character of our being?<sup>102</sup>

For Jonathan, then, the quest is to discover the all in the particular, that is, to embrace the cause of freedom for all humanity by way of first recognizing, and then throwing off, the chains to which his colour condemns him. He gains insight, “ a broadening of awareness that takes in the whole pattern of which he is a part [and] release

<sup>99</sup> Joseph Campbell, *The Hero with a Thousand Faces*, London, Fontana, 1949, p. 388.

<sup>100</sup> *ibid.*, p.391.

<sup>101</sup> L. Liebacher-Ouvrard “Memory and desire: Retif de la Bretonne, Autobiography and Utopia”, *Eighteenth-Century Studies* 31, 3, 1998, p.367

<sup>102</sup> Joseph Campbell, *The Hero with a Thousand Faces*, London, Fontana, 1949, p. 385

from the peculiar blindness or limitation that has beset him".<sup>103</sup> Like that of Campbell's hero, his task is to bring to light "the lost Atlantis" of the co-ordinated soul.<sup>104</sup>

Sources which mention the main character in this project are few. Joseph was imprisoned with Raffaello Carboni who claims that he was a New Yorker, who "possessed a warm, good, honest, kind, cheerful heart".<sup>105</sup> Carboni goes on to refer to him affectionately as "the nigger-rebel" whose replies are laconic, and usually accompanied by mime.<sup>106</sup> Carboni's use of a word which is now considered racist was clearly not intended to be offensive, and the use of the same expression by Aspinall, the barrister defending Joseph, would seem to support this assertion. John Chandler refers to the trials, but does not specifically mention any of the accused.<sup>107</sup> In Eric Lambert's fictional account of Eureka, there is an "escaped Negro slave",<sup>108</sup> a minor character named Aaron le Grand, who may be based on Joseph. This character is not really developed by Lambert, but is portrayed as friendly, sympathetic and helpful to Aborigines; furthermore, Lambert has le Grand recount his intention as a young slave to kill his owner.<sup>109</sup> This novel has had an important impact on the planning of this project. Before reading Lambert's novel I had originally envisaged Joseph killing his owner, but in light of le Grand's confession I changed my plot, in order to avoid any appearance of using the creative ideas of another writer. Furthermore, in Lambert's novel, le Grand is a minor character. Thus, he is, of necessity, a cipher: his main purpose in the novel is to react to the major characters in the novel, and to reveal and reflect the impact of the plot on those characters. After reading Lambert, it became clear that I should write my own work in the first person, since Joseph was to be the major character. I chose to write from his point of view in order to ensure that he did *not* become a cipher. Since Joseph was the major character in my work, this complex character could be more fully revealed through his role of narrator. However removed from one's own culture and history, it seems inevitable that some aspects of one's own experiences seep into the characters

Novels, however, require other characters in addition to heroes. Fictional works based on imagination alone may require much original thinking and writing before characters both believable and larger than life are actually created by an author. On the

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<sup>103</sup> Martin Price, *Forms of life: character and moral imagination in the novel*, New Haven, Yale University Press, 1983, p.11

<sup>104</sup> Joseph Campbell, *The Hero with a Thousand Faces*, London, Fontana, 1949, p.388

<sup>105</sup> Raffaello Carboni, *The Eureka Stockade*, Melbourne, UP, 1963, p. 124.

<sup>106</sup> *ibid.*, p. 140.

<sup>107</sup> John Chandler, *Forty Years in the Wilderness*, Main Ridge, Loch Haven, 1990, p. 82.

<sup>108</sup> Eric Lambert, *The Five Bright Stars*, Melbourne, Australasian Book Society, 1954, p. 117.

<sup>109</sup> *ibid.*, p. 143.

other hand, historical fiction writers may suffer from an embarrassment of riches. Take, for example, the characters who comprised the protagonists of the Eureka stockade conflict: individuals such as Lalor, Rede, Hotham, Carboni, in addition to John Joseph. Such people are already the subject matter of both fictional and non-fictional accounts of the various nineteenth century El Dorados, and appear in both Californian and Australian literature; furthermore, they constitute some of the main characters in this project.

#### 4. Contemporary Criticism and Theory

When embarking on the writing of a historical novel it seemed wise to begin with an understanding of the *genre*. Thus my reading for this project started there, with the monumental work of Georg Lukács, *The Historical Novel*. In his preface to the English edition, Lukács declares his aims “were of a theoretical nature...between the historical spirit and the great *genres* of literature which portray the totality of history”.<sup>110</sup> Regretfully, as I read this work it became clear that in reality my aims were not of a theoretical nature, but were instead pragmatic, that is, how does one go about writing a historical novel. Thus, I discovered that my ultimate interests were not to be served by focussing on literary criticism *per se*, but to consider how to write contemporary historical fiction; consequently, to study Lukács or other works about the *genre* from a literary history or Marxist point of view was of little practical use. This impression was confirmed when I examined more recent works of literary criticism.<sup>111</sup>

While one does not wish to play fast and loose with the broad historical perspective of this fictional work, to concentrate on slavishly recapturing historical truth in great detail (if such a thing were possible) seemed absurd. This perception was both sustained and reinforced by the following comment of Robert Louis Stevenson:

If we were to...go down the list of so-called historical novels, one by one, we might discover that those which were most solidly rooted in our affection are to be included in the sub-division wherein history itself is only a casual framework for a searching study of human character, and that they are cherished for the very same qualities as are possessed by the great novels of modern life. Without going so far as to say that the best historical novel is that which has the least history, we may at least confess the inferiority of the other subdivision in which the author has been rash enough to employ historical scene and character to make his own work attractive.<sup>112</sup>

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<sup>110</sup> Georg Lukács, *The Historical Novel*, Lincoln, Neb., University of Nebraska Press, 1962, p. 13.

<sup>111</sup> See, for example, Marina Allemanno, *Historical Portraits and Visions*, New York, Garland, 1991; Patrick Swindon, *The English Novel of History and Society, 1940-80*, London, MacMillan, 1984; Margaret Scanlan, *Traces of Another Time*, Princeton, Princeton University Press, 1990.

<sup>112</sup> R.L. Stevenson, “Note on Realism” in Brander Matthews, *The Historical Novel and Other Essays*, New York, Scribner’s, 1901, p.23

Nevertheless, I anticipated that some readers would find the notion of a cultured and sophisticated black slave like Jonathan intrinsically unbelievable, and so was at pains to undertake enough historical research to validate the character.

The brutalities of slavery notwithstanding, it was possible for the black partners of white men to occupy a recognized, if uncomfortable, position in Creole society. This was particularly the case before the “re-colonisation” of the old French colonial settlements such as Louisiana by Anglo-Americans towards the middle of the nineteenth century.

During [the eighteenth century] the population [of New Orleans] began to take on a hybrid character because of human nature and the frontier atmosphere of the Gulf area... When Jefferson purchased the Louisiana Territory in 1803 and more than doubled the size of the United States, percentages [of free blacks or Creoles] began to reverse dramatically, even though the black population was fast increasing... The free Creoles of color became withdrawn and clannish and carried on their lives in the French language while the rest of the world spoke Spanish, and then English. Their principal sympathists were the Cajuns, who were white and held on to their own identity and Arcadian heritage.<sup>113</sup>

Cajun men were also more likely to free their slave partners than American slaveholders. Such women were supported in their own establishments as secondary wives, and their children often treated with paternal affection. These relationships are best described by the terms coined by Adrienne Davis, namely “companionate relationships” and “sexual family”.<sup>114</sup> She uses the term “concubine” to define “an ongoing relationship between a slaveholder and a woman whom he enslaves that does not result from his personal violence (as opposed to the pervasive violence of the institution of slavery), and that appears from the record to have some degree of affection on both sides”.<sup>115</sup>

While not common, it was not unusual for white men in these unions to manumit their partners and the children born to them. This was frequently done in the lifetime of the free parent, as States were unwilling to uphold manumission by testamentary disposition:

The presence and growth of a free black population threatened the equation of blackness with enslavement. Southern whites also feared that a free community of color might lead to collaboration and insurrection, or foment dissatisfaction among slaves, who could see that blackness need not be equated with an existence of degraded servitude. The prohibitions of testamentary manumissions represent one of several devices that states used to minimize the growth of a free colored population.<sup>116</sup>

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<sup>113</sup> O.L. Fletcher, “Creoles of color of the Gulf South” (Book review), *The Journal of Negro History*, 82, 3, 1997, p.352

<sup>114</sup> A. Davis, “The private law of race and sex: an antebellum perspective” *Stanford Law Review* 51, 2, 1999, p.224

<sup>115</sup> *idem.*

<sup>116</sup> *ibid.*, p.239

Such was the initial relationship I supposed between Jonathan's parents. Nor was it unusual for gifted and intelligent slaves to be given charge of their white masters' business affairs, or to be treated as family, if not with all the rights of son-ship. The existence of a young man with Jonathan's tastes and privileges is not at all unlikely.

Jonathan's fear of kidnapping and a return to slavery was also well-founded. Whatever their legal status, free people of colour went in constant fear of an enforced re-enslavement:

By force, by trickery, and by the subtle manipulation of legal loopholes, kidnappers operated so successfully in the early national and antebellum periods that hundreds, perhaps thousands, of free blacks were reduced to bondage. Some fell victim to professional rings ...but the desperadoes carried out only part of the mayhem... Fugitive slave laws protected the rights of slaveholders to the extent that free blacks often fell victim to false accusations and cases of mistaken identity. Southern "black codes" often robbed African-Americans of the right of habeas corpus. Free black sailors were incarcerated when their ships docked in port towns that outlawed the immigration of African-Americans. Many innocent free persons of color were locked up as suspected runaways. When the jail fees for the upkeep of these innocent prisoners became prohibitive, they were often summarily enslaved to make up the costs of incarceration. To discourage escapes, Southern judges ignored crucial evidence such as the very documents that proved a free black's legal status. Thus, countless free people of color were denied due process and legally sold into slavery.<sup>117</sup>

As a result of my reading about these "people of colour", many of whom were "free men and women of colour", I decided to concentrate my reading in the area of primary literary sources, as reported in Chapter 3 of this exegesis.

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<sup>117</sup> Mark Fernandez, "Freedom at risk: the kidnapping of free blacks in America, 1780-1865", (Book review), *The Mississippi Quarterly*, 49, 1, 1995, 171

## CHAPTER FOUR

### ETHICAL PROBLEMS

The most pressing ethical problem I faced was the extent to which I could take liberties with what are generally held to be the “known facts” of slavery in the ante-bellum south of the United States and of the circumstances surrounding the Eureka uprising in Victoria in 1854.

This problem possessed an even more sensitive dimension – the question of writing as a black man of another class, a different religion, at an earlier time, in a foreign country. Given the horrors of slavery, the persisting disadvantages attached to possession of a black skin in many countries, and the fact that men and women have died for the causes which Jonathan embraced, I believed that it was incumbent upon me to represent him honestly, without resort to sensational stereotypes. I was also conscious of the controversy surrounding Styron’s *The Confessions of Nat Turner* upon its publication in 1967 which led him, a sympathetic and committed supporter of the civil rights movement, to experience “almost total alienation from black people, be stung by their rage, and finally be cast as an archenemy of the race, having unwittingly created one of the first politically incorrect texts of our time”<sup>118</sup>.

Having been well-received by the American public, and its author being honoured by both black and white institutions, *The Confessions* became stigmatized as a racist work after the appearance of a collection of critical essays, *William Styron’s Nat Turner: Ten Black Writers Respond*. The substance of their criticism, according to Styron, was this; “how dare a white man write so intimately of the black experience, even presuming to become Nat Turner by speaking in the first person?”<sup>119</sup>

Being myself guilty of both kinds of presumption, I justified my position by endeavouring to adhere to the larger historical record in creating the character of John Joseph. Nothing I say of his circumstances is unique to him; there *were* well-educated men of mixed race in Louisiana, even though they were slaves. The real John Joseph was a hero of the Eureka rebellion, by whatever route it was that brought him there. I have not contravened anything that is known of him, save that I have made him a southerner, rather than the New Yorker a single piece of evidence from Carboni suggests.

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<sup>118</sup> W. Styron, “Nat Turner revisited”, p.65

<sup>119</sup> *ibid.*, p.73

Craig Lesley, the author of two novels about Native Americans, *Winterkill* and *River Song*, has been accused of making the “racist assumption” that a “white man has the ability to perceive and master the essential beliefs, values and emotions of persons from Native American communities”.<sup>120</sup> Lesley is charged with deceiving white readers about the true sensibilities of Native Americans. Davies claims that L. M. Silko’s criticism of Lesley is, in fact, an attack “on Enlightenment beliefs in the abstraction “man” and the consequent powers of art to penetrate boundaries of race and culture”.<sup>121</sup> In denying the writer’s ability imaginatively to inhabit any person’s skin, “Silko repudiates much of western literature as practiced within its own ethnocultural milieu, and assumes that fiction in particular should be read as literal reportage of states of mind”.<sup>122</sup>

The characters I invented were not generalizations labeled “black man” or “Irish rebel”; they were specific individuals who inhabited a particular place and time. My ability to create them, as is the reader’s ability to engage with them, is to understand the range of possibilities within oneself.

Styron’s conclusion I have taken as my own:

Nothing should inhibit the impulse that causes the writer to render experience that may be essentially foreign to his own world; it is a formidable challenge and among an artist’s most valuable privileges.<sup>123</sup>

And, like him, I have drawn upon the words of James Baldwin:

Each of us, helplessly and forever, contains the other – male in female, female in male, white in black, and black in white. We are part of each other.<sup>124</sup>

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<sup>120</sup> L. M. Silko, “An old time Indian attack conducted in two parts” in G. Hobson, ed. *The Remembered Earth: An Anthology of Contemporary North American Literature*, Albuquerque, University of New Mexico press, 1980, p.211. Cited in J.C. Davies “Euro-American Realism versus native authenticity: two novels by Craig Lesley” *Studies in American Fiction* Autumn 1994, p.240 (233-248)

<sup>121</sup> J.C. Davies “Euro-American Realism versus native authenticity: two novels by Craig Lesley” *Studies in American Fiction* Autumn 1994, p.240

<sup>122</sup> *ibid.*, p.241

<sup>123</sup> W. Styron, “Nat Turner revisited”, p.74

<sup>124</sup> Quoted in *idem*.

## BIBLIOGRAPHY

- Aaron, D. "What can you learn from a historical novel?" *American Heritage* October 1992, 43, 6, pp.55-56.
- Allemano, M. *Historical Portraits and Visions*. New York, Garland, 1991.
- Aspinall, C. *Three Years in Melbourne*, London, Booth, 1862.
- Borthwick, J.D. *The Gold Hunters*, New York, International Fiction Library, 1917.
- Burnham, P. "Selling Poor Steven", *American Heritage*, Feb-March 1993, v..44, n.1, pp.90-112
- Campbell, J. *The Hero with a Thousand Faces*. London, Fontana, 1949.
- Carboni, Raffaello. *The Eureka Stockade*. Melbourne, Melbourne University Press, 1963.
- de Certeau, M. *The Writing of History*. New York, Columbia University Press, 1988.
- Chandler, J. *Forty Years in the Wilderness*. Main Ridge, Loch Haven, 1990.
- Cheyney, T. A. R. *Writing Creative Fiction*. Berkeley, Ten Speed, 1991.
- Clacy, Mrs. Charles. *A Lady's Visit to the Gold Diggings of Australia 1852-53*, London, Hurst and Blackett, 1853.
- Clancy, P. and Allen, J. *The French consul's wife: memoirs of Céleste de Chabrilan in gold-rush Australia*, translation, with introduction and notes, Carlton, Melbourne University Press, 1998.
- Currey, C. H. *The Irish at Eureka*. Melbourne, Angus and Robertson, 1954.
- Davies, J.C. "Euro-American Realism versus native authenticity: two novels by Craig Lesley", *Studies in American Fiction*, Autumn 1994, pp.233-248.
- Davis, A. "The private law of race and sex: an antebellum perspective" *Stanford Law Review* 51, 2, 1999, pp.221-288
- Dukes, P. "Fictory or Faction?" *History Today*, September 1999, pp.24-26
- Fernandez, M. F. "Freedom at Risk: The Kidnapping of Free Blacks in America, 1780-1865", *The Mississippi Quarterly*, Winter 1995, v. 49, n.1, pp.170-172.
- Fishkin, S. F. *From Fact to Fiction: Journalism and Imaginative Writing in America*. Baltimore, Johns Hopkins, 1985.
- Fletcher, L. "Creoles of color of the Gulf South" (Book review) *The Journal of Negro History* 82, 3, 1997, pp.349-352.
- Follett, K. *The Man From St. Petersburg*. London, Corgi, 1982.
- Foucault, M. *Power/Knowledge*. Brighton, Harvester Press, 1980.
- Fox, M. *Breakthrough: Meister Eckhart's Creation Spirituality in New Translation*. New York, Doubleday, 1980
- Fox, M. ed., *Western Spirituality: Historical Roots, Ecumenical Routes*, Santa Fe, Bear, 1981.



- Golding, D. J. ed. *The Emigrant's Guide to Australia in the Eighteen Fifties*. Melbourne, Hawthorn, 1973. (Originally written by John Capper, it was first published in 1856 as *Philip's emigrant's guide to Australia*.)
- Goldmann, L. *Towards a sociology of the novel*. London, Tavistock, 1975.
- Gronn, C. *Gold! Gold!* Melbourne, Hill of Content, 1981.
- Howitt, W. *Land, Labour and Gold: or Two Years in Victoria*. Kilmore, Lowden, 1972.
- Keesing, N. ed., *Gold Fever: Voices from Australian Goldfields*. North Ryde, Eden, 1967.
- Kelly, W. *Life in Victoria*, Kilmore, Lowden, 1977.
- Korzelinski, S. *Memoirs of Gold-Digging in Australia*, trans. and ed. Stanley Robe. St. Lucia, University of Queensland, 1979.
- Lambert, E. *The Five Bright Stars*, Melbourne, Australasian Book Society, 1954.
- Lapp, R. *Blacks in Gold Rush California*. New Haven, Yale University Press, 1977.
- Liebacher-Ouvrard, L. "Memory and desire: Retif de la Bretonne, Autobiography and Utopia", *Eighteenth-Century Studies* 31, 3, 1998, pp.367-368.
- Lukács, G. *The Historical Novel*. Lincoln, Neb., University of Nebraska Press, 1962.
- MacFarlane, I., ed. *Eureka from the Official Records*. Melbourne, PRO, 1995.
- McLaren, I. F. *The Chinese in Victoria*, Ascot Vale, Red Rooster Press, 1985.
- Meaders, D. "Kidnapping blacks in Philadelphia: Isaac Hopper's Tales of Oppression", *The Journal of Negro History*, Spring 1995, v.80, n. 2, pp. 47-65.
- Megquier, M. J. *Apron Full of Gold*. San Marino, Huntington Library, 1949.
- Penman, S. *The Sunne in Splendour*. Ringwood, Penguin, 1982.
- Potts, E. Daniel and Potts, A. *Young America and Australian Gold: Americans and the Gold Rush of the 1850s*, St. Lucia, University of Queensland Press.
- Price, M. *Forms of life: character and moral imagination in the novel*. New Haven, Yale University Press, 1983.
- Rabinow, P. (ed.), *The Foucault Reader*. New York, Pantheon, 1984.
- Rico, G. L. *Writing the Natural Way: Using Right-Brain Techniques to Release Your Expressive Powers*. Los Angeles, Tarcher, 1983.
- Roberts, S. *Charles Hotham: A Biography*. Carlton, Melbourne University Press, 1985.
- Scanlan, M. *Traces of Another Time*. Princeton University Press, 1990.
- Sherer, J. *The Gold-Finder in Australia*, Ringwood, Penguin, 1973.
- Silko, L. M. "An old time Indian attack conducted in two parts" in Hobson, G. ed. *The Remembered Earth: An Anthology of Contemporary North American Literature*. Albuquerque, University of New Mexico Press, 1980.
- Sims, N. *Literary Journalism in the Twentieth Century*. New York, Oxford University Press, 1990.

- Stevenson, R. L. "Note on Realism" in Brander Matthews. *The Historical Novel and Other Essays*. New York, Scribner's, 1901.
- Styron, W. "Nat Turner revisited", *American Heritage* 43, 6, 1992, pp.674.
- Sullivan, W. "The novelist as historian" in J. Kennedy and D. Fogel, *American Letters and the Historical Consciousness*, Baton Rouge, Louisiana State University Press, 1987.
- Swindon, P. *The English Novel of History and Society, 1940-80*, London, MacMillan, 1984.
- Valente, L. F. "Fiction as history: the case of Joao Ubaldo Ribeiro", *Latin American Research Review* 28, 1, 1993, pp.41-57.
- White, H. *Tropics of discourse: Essays in cultural criticism*. Baltimore, Johns Hopkins University Press, 1978.
- Wilson, D. "Stronger than Fact?", *History Today* January 1999, pp.44-45.
- Zuckerman, A. *Writing the Blockbuster Novel*. London, Little, Brown, 1994.

## PART B: RESPONSE TO EXAMINERS

I must begin by thanking the Chair of Examiners and her Committee for their innovative and creative approach in allowing me to reflect upon and respond to the examiners' comments on my thesis. In doing so, I will discuss not only the issues raised by the Examiners but also the matters which would have been covered in a Preamble had I been made aware that such was now required of candidates. (It was not so required when I began my candidature, but I think it a helpful innovation to both candidate and examiner.)

The suggested format for the preamble as stated in the Examination Guidelines for Research Degrees in Creative Works is as follows:

- A. The creative nature of the thesis
- B. The nature of the creative work
- C. The proportion of the creative work and exegesis components within the thesis as a whole
- D. A brief description of the location of the creative work within the relevant field of theory and practice
- E. A brief description of the location of the exegesis within the relevant field of theory and practice.

This is the format I intend to use in this Postscript. It will be followed by:

- F. My responses to the main points raised by the examiners and
- G. Appendix 1. A re-worked section of Chapters 38-43 of the novel

### A. The creative nature of the thesis

As stated in the original Exegesis, *A Riotous Black Man from Way Down South* is an historical novel which comprises the first volume of a projected trilogy. It is a *bildungsroman* based loosely upon the life of John Joseph, the first man of thirteen prisoners tried for High treason following the Eureka Stockade uprising.

### B. The nature of the creative work

I began by taking a real character in an intriguing and historically significant situation and devising for him a past life which had led him to just that place and time. The guidelines I set myself were neither to do violence to accepted accounts of the Eureka Stockade nor to describe the personalities or characters of the protagonists in ways inconsistent with the evidence available. However, where little or nothing was known, I felt free to invent. This required that I become familiar with the primary sources and the major secondary sources relating to this event and to the American and other settings in which I placed my hero.

Moreover, he came from a background unlike that of the illiterate field hands of most historical fiction, but one which is nonetheless well-documented in both English and French language sources. These sources, too, had to be identified before they could be used.

To this work of historical fiction I added the psychological and spiritual themes woven into a bildungsroman. I wanted my protagonist to be no simple action hero, but rather a man who grows in self-knowledge and spirituality through the suffering and trials he faces and overcomes. For this reason, the life of action is balanced by the internal life stimulated by the spiritual counsellors and mentors who appear at significant stages of the novel.

Although the novel is intended to stand on its own, I did not want to leave the protagonist as a “completed” man. I therefore saw the work as the first volume in a trilogy and hence decided on an ending which left the way open for further developments and adventures.

### **C. The proportion of the creative work and exegesis components within the thesis as a whole**

When I began the thesis under my first supervisor, Dr. Love, the exegesis was to be a very minor portion of the overall enterprise. It was to comprise a straightforward record of the creative decisions made about the direction and course of the novel and the reasons for those decisions. Only in the final stages of writing up did I discover that a great deal more was expected. Hence, the exegesis has a balance of no more than 20 per cent at most of the final thesis. In its present form it offers a justification for the decisions that were taken about the protagonist and the construction of his story. It also has sections on the nature of the genre of historical fiction, explanations of the psychological theories and spiritual movements woven into the novel, surveys of the main primary and secondary sources I used in researching the novel and a discussion of some of the ethical issues raised by my attempt to write the inner life of a black slave born a century and half ago on the other side of the world.

**D. A brief description of the location of the creative work within the relevant field of theory and practice**

The novel that comprises approximately 80 per cent of the thesis combines the genres of historical fiction and *bildungsroman*. It is intended for a popular readership largely unfamiliar with the historical events described.

**E. A brief description of the location of the exegesis within the relevant field of theory and practice**

The exegesis, as described in Section C. above, is an ex post facto exercise intended to explain how the novel was developed and constructed and the considerations and difficulties involved in so doing. The process was complicated by the lack of any formal guidelines from the Department as to the content, structure and purpose of an exegesis.

**F. My responses to the main points raised by the examiners.**

The main criticisms and queries raised by examiners are summarised in the table on the following pages. As examiner 3 noted, there are many different understandings about the nature of an exegesis, so I will discuss only those issues raised by more than one examiner in relation to that part of the thesis, as these would appear to be the more substantive concerns. However, I will deal with **all** their comments relating to the novel itself. Typographical and grammatical errors, inconsistencies and repetitions have, of course, been corrected.

Comments on Exegesis	Examiner 1	Examiner 2	Examiner 3
(1). Material in Chapter 3 would be better placed in Chapters 1 and 4	X		
(2) Secondary sources are used to discuss the genre of historical fiction, rather than using examples from original texts	X	X	
(3) Should demonstrate historians' views on the truthfulness of fiction		X	
(4) Could have been more reflective on the writing process and the choices made			X
(5) Could have had more analysis of the difficulties of first person narrative	X		
(6) The reasons for using modern language should have been explained	X	X	X
(7) Too much emphasis on the mechanics of writing, rather than on its theory	X		
(8) No bibliography of previous creative writing	X		
(9) "Panentheism" a typo. for "Pantheism"	X		X
(10) Need to justify in the exegesis the choice to make Jonathan a particular type of person in the absence of historical fact		X	

Comments on Novel	Examiner 1	Examiner 2	Examiner 3
(1) Too much dialogue not enough action	X	X	
(2) Some scenes, especially the court scene, are too long	X		X
(3) More drama is needed in the creation spirituality sections; the theology needs to be stated, rather than shown	X		X
(4) There could have been more local colour, as described by Melville and Stevenson, in the Tahiti scenes	X		
(5) Inconsistency in the character of Moya		X	
(6) Ending too abrupt, with too many loose ends		X	
(7) The relationship between Jonathan and the reader is unclear			X
(8) The view of race relations in Australia is too rosy			X
(9) Greater tension might have been generated by comparing Jonathan's present understanding of events with past ones			X

**F.1 Comments relating to the exegesis**

*Comment 2: Secondary sources are used to discuss the genre of historical fiction, rather than using examples from original texts*

Given that I believed the weight of the thesis lay with the novel rather than with the exegesis, I chose to summarise the opinions of experts in literature, rather than identifying and quoting from original texts. It could be argued that lengthy quotation would not have been necessary had I referred in passing only to well-known works, but I could not be sure that my examiners would be familiar with any particular item. This would almost certainly be the case where my preferred example would have been drawn from a work of popular, rather than “serious”, fiction which some examiners may have read and others not.

Hence, I allowed my points to be made by respected critics rather than what may have been perceived as obscure quotations.

*Comment 6: The reasons for using modern language should have been explained*

This is a valid point. I chose to use modern idiom for several reasons. Had I used Jonathan's natural speech, it would have been nineteenth century cultured French with a sprinkling of Louisiana Creole. Even in translation, I doubt that it would be user-friendly for a modern popular readership and some of it would, in fact, be untranslatable. Moreover, attempting to convey an accurate rendition of authentic speech may inadvertently cause offence to the sensibilities of the group in question. I did not want to find myself in the unfortunate position of William Styron. In addition, foreigners or outsiders sometimes have a tin ear for the nuances of language and this both strikes a wrong note and distracts the reader.

Another reason for the use of modern idiom was that part of Jonathan's quest is to reclaim his identity as a black man. Many of his problems arise from his sense that he is no different from, indeed even a better person, than his white half-brother and that his natural milieu is cultivated white society. I wanted the modern reader to share this perception and identify with Jonathan with as few barriers as possible so, to that end, I sacrificed historical verisimilitude. Such authors of historical fiction as Sharon Penman and Lindsey Davis, or even Robert Graves, whose scholarship is impeccable, use modern idiom as one method of reaching the widest possible audience who would never read Holinshed or Tacitus. Finally, while accepting that some terminology struck the examiners as overly-anachronistic, some terms assumed to be modern were in use in the nineteenth century. They include such expressions as "buck-naked", "private investigator" and even "United Kingdom". (This latter term appears in a contemporary legal document quoted in the trial scene in the novel.) In similar vein, Examiner 2 comments in the typescript on the unlikely allusion to Uncle Tom's Cabin by Jonathan's barrister only three years after its publication. In fact, this speech is taken verbatim from the trial transcript. It should be remembered that Verdi operas were performed in Victoria before they were mounted in New York, and Mechanics' Institutes had standing orders for the latest fiction from abroad.



*Comment 9: "Panentheism" a typo. for "Panththeism"*

The exegesis contains the following text:

The second tenet is panentheism – that all beings are created by God and live united in a spiritual relationship with Him/Her, or as Eckhart frequently stressed in his sermons and other writings, "God is in us and we are in God". One should be aware that he was not a pantheist and therefore totally rejected the notion that we are all gods. (p.22 in original )

I believed that this made the distinction clear and that the one was not synonymous with the other. However, since it obviously did not strike the examiners in this way, I have added the following text to footnote 58:

Note that panentheism is not the same as pantheism. Panentheism means that God is IN all things, while pantheism means that God IS all things.

## **F.2 Comments relating to the novel**

*Comment 1: Too much dialogue not enough action*

In one of the first sessions with my original supervisor, Dr. Love, she counselled me strongly to avoid at all costs the inbred training of an academic to describe a story rather than have the characters play the predominant part in moving the narrative forward. Since a graduate degree in creative writing requires a student to learn the craft of fictional authorship, I followed her very wise advice and admonition. This was not always possible and, if one reads the novel carefully, some parts contain lengthy descriptions. In particular, the innermost thoughts and feelings of Jonathan are described by himself as narrator. Thus, in my opinion, dialogue and description are balanced in my work. I take as a compliment the comment of Examiner 3 that the novel might well be re-worked as a film-script which would indicate to me that, despite her reservations, she found the dialogue colourful and vivid.

*Comment 2: Some scenes, especially the court scene, are too long*

Were the novel to be considered for publication the length of these scenes would be the subject of discussion and negotiation with an editor. However, with specific reference to the court scene, there are reasons which would make me extremely reluctant to cut it.

In the first place, the court scene is based almost entirely on the official shorthand verbatim record of John Joseph's trial, a copy of which is held in the library of the Supreme Court of Victoria. As such, it is the only extant detailed record available to the author: Thus, the fictional character I chose to call Jonathan is grounded in real circumstances. Furthermore, the lawyers who donated their services performed brilliantly using high-risk strategies

combined with outstanding knowledge of the law to ensure the acquittal of John Joseph. The language used by these representatives in cross-questioning, raising points of law in what was essentially a show trial and in their summing-up was a masterpiece of nineteenth century legal rhetoric which I believed deserved to be preserved and made more widely known to a modern readership. It is interesting that the examiners found this authentic nineteenth century language inappropriate, perhaps reinforcing my point about the need for modern idiom. In this instance, I believed that the reasons for preserving it were more important than the need to be comfortable.

Nevertheless, I have attached a revised, and I believe inferior, version of this scene as Appendix 1. I have found it difficult to cut and I believe that this neither enhances the dramatic impact nor makes the trial scene any more effective as the climax of the novel.

*Comment 3: More drama is needed in the creation spirituality sections; the theology needs to be stated, rather than shown*

The only instance I know of theology being shown, rather than stated, occurs in the works of Matthew, Mark, Luke and John and differences in interpretation of these texts have been the occasion of some unpleasantness and much debate over the past two millennia. Lacking Divine inspiration, I took refuge in description.

*Comment 4: There could have been more local colour, as described by Melville and Stevenson, in the Tahiti scenes*

The Tahiti scenes comprise a transition between Jonathan's experiences at home and his adventures in Australia. They serve to illuminate further both his character and that of his friend Sam, and to raise his consciousness that his skin colour is not always as much to his disadvantage in other places as it is in America. In my opinion, the attempt to inject any more local colour could have opened the way for criticism of the work as being more travelogue than bildungsroman. Most importantly, this journeyman scribbler would never presume to emulate the descriptive powers of two such masters who had actually experienced nineteenth century Tahiti and described it in impeccable nineteenth century prose.

*Comment 5: Inconsistency in the character of Moya*

Jonathan encounters Moya as:

... our landlady, about thirty-five years old, with greying hair, and stained alpaca dress. She seemed nervous, and spoke in rapid sentences of a

strange patois of English and French for Pierre's sake. Her confusing speech was punctuated by the bobbing of her head as she crossed herself. I went closer to hear her, and it occurred to me that her nervousness might be related to the amount of alcohol one could detect on her breath. She was astute, however, offering us a 'room' for two pounds ten shillings a week each: we agreed, and she collected the money from us before we took our bags upstairs.

The next day, he changes his mind:

Our landlady, Mrs. O'Connor, seemed less confused and nervous than last night, and we could understand her speech better when she was not drunk. Still crossing herself at the end of every sentence, she asked if we should be returning for an evening meal, as it was included in the price of the room. She said if we did intend to return, she would cook a special meal, in honour of Pierre, and because she had a brother in Dieppe studying for the priesthood. We agreed to return and eat that evening... When we came down to dinner I realised that I might have judged Mrs. O'Connor unfairly the previous evening. She was well-dressed, and did not appear to be drunk. She seemed younger than yesterday, and a much more attractive person than I had at first thought her to be.

In other words, Moya can drink too much sometimes and behaves badly when she does so, a not uncommon human behaviour. It is not inconsistent with her being a capable, loyal and intelligent person most of the time.

*Comment 6: Ending too abrupt, with too many loose ends*

In terms of Jonathan's character development, Australia has served its purpose and there is no reason to keep him here. In terms of the plot (and in reality) there were clear dangers in his continuing to maintain a high profile. John Joseph drops out of Australian history and so does Jonathan. Many popular historical novels – *Gone with the wind* is a classic example – leave loose ends and are the more intriguing for that. I hoped to leave the reader wanting to know more and looking forward to the next volume.

*Comment 7: The relationship between Jonathan and the reader is unclear*

One examiner raised the question of whether the novel is confessional or comprises Jonathan's reflections in later life. The novel begins with a date to signal that a chronological account of some kind will follow. Then, in the first chapter, Jonathan promises his father a regular letter about his life and his brother's progress on the goldfields. After the fight with Allan, he brings his father up to date (Chapter 10). The rest of the novel is, in effect, an account of his fortunes to his father, more as a journal than a letter, but in narrative form.

*Comment 8: The view of race relations in Australia is too rosy*

This is a reasonable point of view. No-one with a knowledge of Australia's sorry record of race relations would deny the existence of bigotry and injustice, no less in the nineteenth century than in our own. However, I maintain – and the historical record supports me – that on the goldfields foreign blacks were treated markedly better than our indigenes or the Chinese who suffered appalling discrimination. There were, for instance, letters to the editor of *The Age* along the lines of “this is not America and John Joseph is not a slave” and the trial record itself demonstrates the Attorney-General's indignation at the suggestion of racial bias. (The man was not averse to judicial murder but resented the imputation of racial prejudice.)

*Comment 9: Greater tension might have been generated by comparing Jonathan's present understanding of events with past ones*

The novel reflects Jonathan's contemporary understanding of what is happening to him, not the understanding which comes with hindsight or reflection. As this novel was intended as the first of a trilogy, tension of the kind suggested could be developed in later volumes.

## APPENDIX 1

### Revised Court Scene

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#### CHAPTER THIRTY EIGHT

Prisoners at the bar, the charge against you in the first count of the information to which you are now called to plead is, that you did, on the 3rd December, 1854 (being at the time armed in a warlike manner), traitorously assemble together against our Lady the Queen; and that you did, whilst so armed and assembled together, levy and make war against our said Lady the Queen, within that part of her dominions called Victoria, and attempt by force of arms to destroy the Government constituted there and by law established, and to depose our Lady the Queen from the kingly name and her Imperial Crown.

In the second count you are charged with having made war, as in the first count mentioned, and with attempting at the same time to compel by force our said Lady the Queen to change her measures and counsels.

In the third count the charge against you is, that having devised and intended to deprive our said Lady the Queen of the kingly name of the Imperial Crown in Victoria, you did express and evince such treasonable intention by the four following overt acts:-

1st. That you raised upon a pole, and collected round a certain standard, and did solemnly swear to defend each other, with the intention of levying war against our said Lady the Queen.

2nd. That being armed with divers offensive weapons, you collected together and formed troops and bands under distinct leaders, and were drilled and trained in military exercise, to prepare for fighting against the soldiers and other loyal subjects of the Queen.

3rd. That you collected and provided arms and ammunition, and erected divers fences and stockades, in order to levy war against our said Lady the Queen.

4th. That being armed and arrayed in a warlike manner, you fired upon, fought with, wounded, and killed divers of the said soldiers and other loyal subjects then fighting in behalf of our said Lady the Queen, contrary to your duty and allegiance.

In the fourth count the charge against you is, that having devised and intended to levy war against the Queen, in order to compel her by force and constraint to change her measures and counsels, you did express and evince such treasonable intentions by divers overt acts, which overt acts are four in number, and the same as those already described in the third count.

I don't know about my co-accused, but the official wording and severity of these charges petrified me. But even as I thought of my predicament, and the serious nature of the charges, I remembered some of the words of that editorial in the Age of nearly a week previously that had so delighted Grant and me. I could remember that sarcastic passage by heart:

The solemn mockery of a state trial, with all its array of extra parchment, horsehair, bombazine, legal verbiage, and professional cant will not change it. The false swearing, be it ever so unblushing, of a million suborned troopers, traitors, and spies, will not change it... The shallow hypocrisies of a whole legion of attorneys and solicitors, general or special, be their visages never so parched, their smiles never more sardonic, their efforts at pathos never so Pecksniffian, will not change it... twelve honest men will not fail to hold their belief that the "outbreak" at Ballarat was simply an outbreak against the small tyranny of a herd of despicable officials, and not against the person and crown of the Majesty of Britain.

The memory of this passage amused me so much that I almost laughed out loud, but I caught myself just in time, remembering that I was to present myself as a simple, but not rebellious, man. I contained my display of mirth to a wide smile, a simple, drooling grin, and a furious scratching of my scalp. I had been assigned my role, and I determined

to play it for all it was worth – but not to get people’s backs up by overplaying it. Nevertheless, I knew that I was in deep trouble, and while I had made my commitment to follow the advice of my legal team, I experienced a terrible doubt. Had I been wise in being so acquiescent? Should I have shopped around to see what other lawyers might have offered me?

To my shame I wondered if I should have turned Queen’s evidence for the Crown, and perhaps saved my skin by giving evidence against my friends. It had been rumored that the Crown was prepared to offer lighter charges and sentences to any of us prepared to switch to become prosecution witnesses. At the same time as I entertained these thoughts, I loathed myself for having even given them consideration. So my mind drifted while the legal wrangling began, and I had to force myself to give full attention to the proceedings of the Court.

We all pleaded not guilty.

It was at this point that Attorney-General Stawell began to reveal a great lack of confidence in this prosecution which he himself headed. He was not the type of man to inspire confidence, being at once diffident yet aggressive, submissive yet argumentative and petty. To me he seemed small-minded and vindictive, but then, so do many lawyers it has been my misfortune to encounter. As I watched him ply his trade, he really scared me, because I knew very well that he would happily deprive me of my life. Therefore, I reminded myself not to dismiss him as an incompetent fool, whatever he might appear.

Mr. Ireland, Counsel for one of my co-accused, proved that he could be strong-willed too, for he staunchly resisted every attempt by the judge and Stawell to try us all together. The Attorney General seemed most inconvenienced by this intransigence, as did the judge, who lectured us all, “The prisoners will understand that by joining in challenges they could all be tried together.” Stawell sang along in unison, as though by so doing he and the judge could beguile us all to walk together like lemmings to the place they chose to execute us.

So the Attorney General tried to deceive us by the comment, “Exactly, it would save a great deal of time and be more convenient; of course it is for the learned counsel to sever if they please.” The Chief Justice and the Attorney General were quite clearly set against us; after all, they had their show trial, and because it was important to them to find us all guilty, they thought we would lose heart as they applied the formality and legal trappings and mumbo-jumbo of their witch-doctor trade, and become frightened of them, making it easy to swing us all from ropes. By now I could feel myself growing angry, and

I had to remind myself that my task was to play the simpleton convincingly. What I really wanted to do was to stand on my own two feet, and tell them with my mouth that they did not fool me. Then I hoped that Chapman and Aspinall would properly defend me. And scratched my head again.

Another of the defence lawyers simply rose to his feet right in the middle of these unctuous blandishments, and dismissed them. Again judge and prosecutor were not pleased - they both took great pains to make it clear that it was most inconvenient. This struck me as like men churlishly disputing an inconvenient time for dinner rather than proceeding with a trial for a man's life without due care to provide for him to call witnesses for his defence. It then occurred to me that we were dealing with officials seriously out of touch with the events in the real world.

At least the press would be here, and I hoped that the pettiness of judge and prosecutor would be noted in their reporting. At our usual early morning meeting Grant had made that very point, that, where the authorities were so clearly biased and unjust, the press, and ultimately the people would deny them unbridled rights to trample over the defences of a just society. For myself, I remained unconvinced. But Grant had assured me that our team knew Stawell intimately, and they felt certain that he would not be able to conceal his narrow-minded vindictiveness from an honest jury.

I knew that for some reason my lawyers wanted me to be tried before the other twelve. I had been given precise instructions on how to act and what to say and although my Counsel seemed to grow more optimistic about my chances of acquittal, I felt distinctly sick to my stomach to be the first lamb to be sent to the shearer. But the choice was not mine.

"Very well then," piped the Attorney General, " we will proceed with the trial of Joseph."



## CHAPTER THIRTY NINE

The Queen versus John Joseph trial commenced with the high farce of jury selection.

We let a gentleman and a saddler through, then I rejected some potential jurors, then the Crown did the same. A liquor merchant slipped through before still others offended me, but I relented at a late stage to permit a stone mason, a butcher, and a carpenter participate.

By this stage of the proceedings I knew my audience, and I played up to them well, I think. I sought never to look rebellious, aggressive, or nasty, always playing a confused man, not quite sure if he were about to be cuffed by a displeased official. Grinning nervously, shuffling my feet, scratching my head, never speaking clearly, I tried to play my role as convincingly as I could, for I knew that my life might depend on this one performance.

Continuing my challenges, like some poor fool enjoying a brief taste of power, I sent a few more hopefuls packing, and continued to do so to anyone who impressed me as being at all susceptible to officialdom, or who was himself an office holder of any kind. Grant had impressed on me my right to challenge anyone I didn't wish to trust my life to, anyone who slipped through the safety net of my Counsels' challenges. As I had been warned by Grant that it was unlikely that I should be called as a witness, thus exposing me to Crown cross-examination, I knew I must take every opportunity to impress on the Court, and particularly the jury, what type of person I was. So on every occasion I sought to look brave, but pitiful and confused.

Each of my challenges seemed to heighten the emblazoned face of Stawell, and at the point of several challenges I actually made my demonstration of long and deliberate thought, before bobbing my head in a craven way to the juror I had just passed, then to Stawell, then the judge, then the Clerk of the Court, then the gaoler in turn. I allowed a few more citizens to dribble through, but then, no, some standards had to be maintained, and the challenges started all over again. In a rush I allowed some more victuallers, householders, and a coffee roaster.

As soon as I laid eyes on George Armstrong, however, I knew that he would not do, so what could I do but challenge?

Like a child having a tantrum the Attorney General looked contemptuously at me, then with loathing at my Counsel, before actually stamping his feet and clenching his fists.

His eyes seemed to search the ceiling for some malevolent deity to open up the floor and swallow us up. When this failed to happen, he then turned to appeal to the Chief Justice.

"May it please your Honour, I wish to take the opinion of the Court as to whether the prisoner is entitled to more than twenty preemptory challenges. He has already exhausted twenty. This is now the twenty-first."

"It is the twenty-third, according to my note," observed the Chief Justice caustically.

Seeking to appear a very stupid man, I found it difficult not to appear smug. Aspinall had himself instructed me on how to appear. No doubt hoping to lend weight to my confusion no explanation had been given to me, other than, "Mr. Attorney General is under the misapprehension that we will not whole-heartedly oppose this show trial, because he thinks that as the Governor's favourite, he is entitled to lay down the law, or his interpretation of the law unopposed. In that he is mistaken, and no less a person than you shall reveal for all the world to see what a foolish martinet he is. Just like his military master, the good Captain Hotham!" Though disappointed that I was likely to remain silent and allow my defence team to speak for me, I was more than willing to follow their advice, especially as my life was at stake.

I was as surprised as most everyone else in the court when Chapman rose and made the simple point, "The objection is to this juror."

Stawell didn't seem to understand my Counsel's point, so he attempted to cover his confusion by repeating what Chapman had said. As he did this he grimaced rather than smiled, he rubbed his hands together as though a winter wind blew through the summer court. Then he resorted to his legal jargon, and claimed that no one "arraigned for murder or other felony" could make more than twenty challenges. As this man I disliked so much grew very angry, I realised that I hated him most for his petty, bureaucratic personality. The more furious he became, his voice became almost falsetto, and he seemed to chant his legal breviary like a chirping chorister.

Chapman seemed to anticipate this behaviour, and using his right to argue in court, proceeded to lecture Stawell as he might a first year student of the law about my right in common-law to challenge. Holding up his right hand, he began his humiliation. "The usual classification of offenses is into treason." Here he folded his right index finger into the palm of his hand, "Treason," the second finger followed the first relentlessly, "felonies," the middle finger descended, "and misdemeanors." Here the right ring finger

struck. "Now," said Chapman, warming to his task, "Treason is felony and something more, and is a higher offence than a misdemeanor."

Chapman's instruction infuriated the Chief Justice. "I do not think I need to hear you upon that point, Mr. Chapman." Squirring, Stawell weakly attempted to argue that the right to challenge more than twenty jurors was not granted under common-law. As neither the judge nor Chapman even bothered to reply, and as my challenge was granted, I felt vindicated. But now, I reminded myself, was no time to get cocky, yet I nevertheless took my time scrutinising the next juror. This candidate was an inoffensive bookseller, so I made no further challenge, and, as the jury was now comprised of my twelve peers, it was finally sworn in.

I considered that we had come out well ahead in these legal skirmishes so far, but I was now filled with dread about the damning things the prosecution was likely to say about me. The scenes of soldiers and guards openly pointing at me, and identifying me as I lay in my cell in Ballarat flashed through my memory. Would they bring out the fact that by some I might be considered a runaway slave? As I thought about such threats, I started to descend into those dark thoughts that had concerned me since my arrest. Depressed, I waited for Stawell to begin his onslaught of personal vilification against me. I was surprised, though, that in an inaudible, uncertain murmur he charged that I and others had committed 'heinous' crimes against the Queen, and had painstakingly conspired against Her Majesty to deprive her of her lands and possessions, sheep and cattle. But I actually seemed to be missing from the picture. His heart didn't seem to be in describing in detail such horrific state crimes which I had actually committed against the Queen, though he ploughed on and on, in very general terms, through the details of the various meetings of the mass of disgruntled diggers at Ballarat.

I was disappointed that Chapman allowed this diatribe to go on unchallenged. It was at this stage that I began to wish that I had a more aggressive attorney. All of my lawyers sat silently letting the opportunities pass, until it was too late and the first witness was called.

The doors of the court were then thrown open and I heard the clerk shout several times in the gallery outside the courtroom "Trooper Goodenough." As several calls were required there was a murmur of laughter around the courtroom audience at this unusual family name. This conversation was suddenly halted by the crashing of heavy boots on the marble floor of the antechamber. Suddenly, the immaculately uniformed figure of the trooper marched erectly through the open doors into the astonished courtroom. As the

doors closed silently behind him this automaton marched to the witness box, stamping his heavy military footwear onto the beautifully polished floorboards. Up the steps of the box he went, before halting and stamping both feet until he stood at attention while repeating the words of the oath read to him by the clerk. Only then did he carefully remove the black pill-box hat, take off his gleaming white gloves and stand at ease.

As I looked at his face more closely, I recalled that he had been pointing at me, and apparently discussing me at what seemed a lifetime before in Ballarat jail. This sudden recognition sent a pulse of fear and apprehension through my body.

Stawell started by asking details about the various protest meetings, which had been addressed by such digger leaders as Holyoake, Kennedy, Hayes, "and one or two others" – but no mention of John Joseph.

At last Chapman was provoked to stand up and, with a loud sigh, "ask my friend the Attorney General whether he is prepared to connect the prisoner at the bar with this portion of the evidence, because if not it is wholly irrelevant to the charge against the prisoner?" Naturally Stawell referred to many legal precedents legitimising his handling of my prosecution, and it was in his ruling against Chapman that the Chief Justice again demonstrated his bias against me in permitting to continue this totally immaterial line of questioning prosecution witnesses by the Attorney General. The Judge not only ruled against us, but he joined in the questioning of this very shifty looking witness about Lalor.

The delighted Stawell then sought information about the flag that poor old Eddie had died defending, and then produced it as evidence, asking Goodenough to identify it. But the trooper replied that he knew that the flag was blue with a white cross, but could not swear that the one produced in evidence was actually it.

While this was going on my spirit and hope were draining away. I saw myself as confronted by a prosecutor out to hang me, assisted by an unashamedly biased judge, and at that point I remembered the court in San Francisco, and how I had rejoiced at truly unbiased judgments of Judge Morrison. But at least I was having my day in court, and at many points in this evidence I had to restrain myself from jumping to my feet and calling this witness a liar. Then I remembered how Father Lucien had taught me how to just let things go, and where there was blackness to enter into it, and search for God who was supposed to shine there. He didn't seem to be anywhere around on that day.

Meanwhile Goodenough was asked to describe everything he could remember about the flag, its pole, how many people were there, what arms they carried. But my name he never once mentioned. The trooper ploughed on, describing meeting after

meeting, and how Lalor led about five hundred diggers to swear “to defend each other and fight for their rights and liberties”. Evidence was given about other prisoners to be tried with me, such as Raffaello and Lalor, how they were armed, and how many men they led. And still never a mention of me.

Finally, it was Chapman's turn to cross examine Goodenough. He set about his questioning in far too friendly a fashion for my liking.

Beginning with the meetings, he simply followed the same line of questions as Stawell, who slouched on his bench with a self-satisfied smirk on his face.

“How many people were there?”

“I should say about 1500.”

“What means did you take to ascertain the number?”

“I only gave a rough guess.”

Chapman asked about the construction of the platform, and whether speakers addressed the meeting from it. Then, like a thief in the night, came a series of questions from Chapman that nearly brought me to my feet shouting for joy.

“Was anything said about licenses?”

“There was something, but I could not recollect the words that were spoken.”

“Could you hear what was said?”

“I could hear it, but I did not attend to it.”

“How were you dressed at the time?”

“I was dressed as a digger.”

“By whose orders did you go there?”

“By the orders of sub-inspector Mr. McCulloch.”

“Did he order you to strip off your uniform?”

“He did.”

“And you went as a digger?”

“Yes.”

“Do you swear that you heard nothing about licenses then?”

“I could not repeat the words; there was something spoken about licenses.”

“What was it?”

“I couldn't say.”

“What was its nature?”

“I could not say what it was.”

“You say you heard Lalor tell the people to stand up for their rights and liberties?”

“No, I am not speaking of Lalor; I did not hear Lalor speak then, it was Hayes I heard speak those words.”

“I took it down, 'The meeting then called for volunteers. Lalor called for men to come forward to stand up for their rights and liberties'?”

“This was after Hayes.”

By this time Goodenough seemed to be floundering, and his replies were accompanied by many glances toward Stawell for assistance, but none came.

Chapman mildly made the point. “I am reminding you of what you said. What else did Lalor say?”

“He called for volunteers.”

“What else did he say?”

“He called for other men to go and look for firearms.”

“Did he say anything about licenses?”

“Not that I recollect; I could not state the words.”

“What else did you hear him say besides calling for volunteers?”

“I cannot recollect anything.”

“How long did he speak?”

“He was there for an hour, but he did not talk all the time.”

“How long was he talking?”

“He was talking for about ten minutes, but I was not near enough to hear every word he said.”

“But you did hear him say 'Men, come forward and stand up for your rights and liberties?’”

“I did.”

“Was that all you could hear him say out of ten minutes speaking?”

“That is all I can swear to.”

“And you swear that you never heard him say anything about licenses?”

“I could not state what he said about licenses.”

I felt that Chapman had done well to show this man to have a very selective memory, and I prayed that the jury agreed with me. I anticipated that Chapman would leave the questioning there, but he did not let Goodenough slip through on even the irrelevant evidence against me. I turned my full attention to the questions he was asking.

First, my Counsel went over the evidence about the flag, and forced the trooper to reiterate his inability to identify the one produced as evidence, although the witness

maintained that the miners' flag had been similar to it. Chapman then drew out of Goodenough the admission that it was common to find flags of all shapes, sizes and designs flying over stores and other commercial properties at the diggings. Therefore, Chapman pressed, "It is not a wonderful thing to see a flag flying at the diggings?"

"No" was the reluctant reply. Chapman pursued his now desperate quarry by asking him how many flags he had seen at the diggings, and the trooper thought up to two hundred - then said that none of those had a star in the middle. So, then, the lawyer proposed, the only flag with mischief was one with a star in the middle? Well, no, but a flag with a star in the middle was never seen over a store by the trooper. These clearly evasive and misleading replies not only cast some doubt on the truthfulness of the witness but were causing open mirth in the public gallery. What surprised me was that this particular judge did nothing to stop it.

By more skilful questions about what Goodenough thought "rights and liberties" were, my Counsel forced him to admit that it was all about abolishing the license fee. Chapman merely looked from the witness-box to the jury several times, and raised his eyebrows in a gesture which I interpreted to convey disbelief in anything this witness said.

Relentlessly Chapman returned to the question of the clothes worn by the trooper when he attended the diggers' meetings.

"What dress were you in then?"

"In the same dress."

"As a digger?"

"As a digger."

"What was the occasion of their dispersing on that morning?"

"The soldiers and the police came up, and they all ran away."

"Did you run with them?"

"I did run among them."

"As if you were one of them?"

"Yes."

"And in fact you pretended to be a digger?"

"I did."

"Did you talk with any of the persons present?"

"With some of them."

"What did you say to them?"

"We were talking of the political affairs."

“Tell us what you said; give us your notion of political affairs?”

“Concerning the meeting and the diggers.” The now less-starched and sweat-drenched trooper spoke evasively. But Chapman refused to let him avoid answering his questions.

“What did you say?”

“There were several of us together, and one asked one’s opinion, and another another’s; one was for petitioning the Governor, and another for taking up arms.”

“What were you for on that occasion?”

“I was for petitioning.”

“Did you say that you would stick up for the rights and liberties of the subject?”

“I did.”

Now came the telling question. “In fact, by your whole demeanour, you intended to make them believe that you were one of them?” A very long silence followed before Goodenough blurted out, “They might have believed I was a digger; I do not know whether they did or no.”

I was amazed that Chapman did not follow this up further, and felt we had missed our chance, for he then returned to questions about meeting times and details about the flag.

But perhaps things would get better for us, and maybe we had made some progress in saving my neck.



## CHAPTER FORTY

At the behest of the Clerk of the Court the immaculately uniformed figure of Trooper Andrew Peters swept into the witness box in the same fashion as his recently departed comrade Goodenough.

His evidence was also a carbon copy of that of his predecessor. Peters stated that he had been at several meetings, but no, he had not seen me there. Then his evidence became more precise when he claimed that he had attended a meeting where men were drilling. Among those men he claimed to have seen me armed and drilling with other diggers on the Thursday and Friday before the Eureka battle. Furthermore, he asserted that I had been in a contingent commanded by Raffaello Carboni. He had not, he claimed, seen any more of me after Friday.

As Chapman rose to cross examine Peters, it occurred to me that these people, dressed so respectably in their dress uniforms, were willing to tell any lie about me to see me hang. The thought that government officials, police and soldiers were willing to commit perjury was chilling, for I had never been armed, nor had I drilled in the fashion described by Peters. I began to panic, then I remembered that I was there to put on an act, so I scratched my head and tried to look like a half-wit.

Chapman began rather more assertively than he had with Goodenough.

"Have you ever known this man before?"

"No."

"Are there many black men on the diggings?"

"There are some."

"Are you quite positive that this was the man you saw?"

"I am."

"How far from him were you at the time?"

"About ten or fifteen yards."

"How were you dressed at the time?"

"In private clothes."

"Like a digger?"

"No, not exactly like a digger, like a storekeeper."

"Who directed you to strip off your uniform?"

"My superior officer, Captain Evans."

Several times Chapman asked Peters about other black men, and about his certainty that I was the black man he saw drilling with other armed men. He stuck to his evidence despite claiming to have only seen me on the two previous occasions he saw me bearing arms, and reported it to his superior officers at the time.

Chapman was able to wring from this witness the admission that there had been many troopers dressed in civilian clothes spying on the diggers.

At this time I was getting very tired, and put most of my remaining energy into acting up for the jury in the usual mad way.

Another uniformed soldier was called, and went through the same charade as his predecessors. Like them Patrick Lynott was a perjurer. At first I didn't pay much attention to his evidence, so busy was I scratching and fidgeting around.

He at least was not a police spy, for he was one of the soldiers who had attacked and overrun the Eureka Stockade in the early morning of Sunday, 3<sup>rd</sup>. December. 1854. He claimed that the attacking force were advancing towards the stockade when the defenders opened fire on them, first with a single rifle shot, then with a massive volley. Stawell asked him if he saw anyone inside the stockade whom he recognised.

"Yes, I saw the prisoner."

Then I was astonished to hear him declare, "He had a double-barrelled gun, and he raised it and fired immediately; he was in the attitude of presenting it; he discharged it, and in the direction in which he fired I saw Captain Wise lying wounded."

Now I could see where these men were headed, for it became clear to me that if they could not get me for depriving the Queen of Her Empire, they would get me for a murder which I had not committed, that of a Captain in Her Majesty's army. This made me angry, but worse I was petrified that they really would hang me. I was very relieved to see Chapman leap to his feet and address the judge.

"I would submit to Your Honour that, in a melee of this sort, where, as the witness has described, firing was taking place pretty sharply on either side, it would be utterly impossible to ascertain from which particular bullet Captain Wise unfortunately fell. I submit that is utterly impossible for any witness to know that." But this judge was so tame that he said nothing, and simply allowed Stawell to discharge the protest, and continue to question the witness, who claimed to have lost sight of me after I had fired the shot.

Chapman got little out of this man, whom I had never seen before. He made progress in jogging my memory, for out of the blue he asked Lynott, "Were there other black men about the camp there?"

"There were a good many black men."

That made me recall that Sam had drilled with a double-barrelled shotgun. Now I knew that I was in very serious trouble, and once again my hopes plummeted. Chapman worked away at the witness, who admitted that the army attacked the stockade at dawn, and that the shot had been fired from between 200 to 300 yards away. But by now I had lost all hope.

Sergeant Daniel Heggarty reenacted the burlesque of parading in full dress uniform through the court, and very impressive he was too, with three gold stripes on each scarlet arm. I was glad that his evidence was less damaging than Lynott's. Sergeant Heggarty gave evidence that he had seen me in the stockade, running away, with nothing in my hand.

And so the witnesses came and went. Then, at last, the judge adjourned the case until ten a.m. the following day.

I had a brief meeting with Aspinall before my trial resumed. I hadn't slept at all the previous night, and was very downcast and pessimistic about my chances of acquittal. Aspinall was supremely confident. He said that he was sure that Chapman had made a very good case for us, and that he was certain that I would be freed by the weekend.

"I think you might be rather too optimistic there, for these people seem to want to pin a murder conviction on me as well as one for trying to take the Empire away from the Queen! But I tell you what - let's have a bet on it! If I am right, you pay for my burial in Father Lucien's graveyard, and if I lose, and walk away a free man, I'll buy and drink with you the best brandy that money can buy in Melbourne."

Since my first antagonistic meeting with the lawyer, I had discovered that he wasn't the pampered dandy whom I had instinctively disliked. There was no doubt in my mind that he was a very heavy drinker, but now when he consulted with me he neither smelt of liquor, nor of the heavy cologne with which he had first tried to conceal brandy fumes. When I reached the point of not noticing that obnoxious smell of the man, I began to admire his fine mind and ready wit. On this morning he accepted my bet with alacrity. So I cautioned him.

"Look, we are all going to hang, no matter what you do, or how hard you try. Perhaps it is a case of what Voltaire might call '*pour encourager les autres*'. If they are lucky, some of the Irish might get off, but not Carboni or me, foreign devils beyond the pale!" I turned away to hide the fear and depression which must have been obvious on my face.

He moved to my side, staring out of the barred window into the nothingness beyond.

"You could not be more wrong, because we are certain that no jury would convict you - any of you. The people on the jury are not fools, and even a fool could see that you are political prisoners being tried on trumped up political charges. But I'm glad you said what you just did, for I have just had a very good idea of how I'm going to use it to your advantage later. No matter what is said about you today, do not believe it is true. In my country there is a saying which children learn - 'sticks and stones may break my bones, but names will never hurt me!' What we'd like you to do is play your vital role of the fool, or perhaps I should say jester, mocking the jury, the judge, the prosecutors, right the way up to the monarch, just as the court-jesters once did to their very faces."

So the proceedings began at ten o'clock on the dot. I stared at the ceiling whistling soundlessly, while witness after witness was brought in to testify against me. Private Patrick O'Keefe, who was a soldier who attacked the stockade, swore that at a distance of about five or six yards he had seen me fire in the direction of Captain Wise. He said that he had not actually seen me taken prisoner, but that after firing the shotgun I took off for a tent, and that was the last he saw of me until he noticed me among the prisoners outside the stockade.

Chapman now probed this man's evidence for information about the time of day.

"What hour of the morning was it?"

"Between four and five o'clock."

"Was it in the grey of the morning?"

"No, there was plenty of light."

"Do you mean that it was broad daylight at that hour?"

"Yes, it was light enough to see any object at three or four hundred yards."

"Was the sun up?"

"No, it was not."

Private John Donnelly, gave essentially the same evidence, but it was slightly less damaging to my defence because he claimed to have seen me with the shotgun in my hand,

but had not seen me fire it. This time Chapman simply resumed where he had left off with O'Keefe.

"You say you were fifty yards off?"

"Yes."

"What time of the morning was this?"

"About four o'clock."

"Was it broad daylight or break of day?"

"I could not say it was broad daylight."

"But at the time you could see this man?"

"Yes."

"Were you all fighting at the time?"

"We were."

"Had you ever seen this man before?"

"No."

"You never saw him around the diggings?"

"Not to my recollection."

"Do you mean to say that at that time, in the confusion of fighting, you could recognise one black man from another at fifty yards distance?"

"Yes, I think I could."

"Recollect this is a serious question, affecting the life of a fellow creature, though a different colour to yourself. Are you prepared to swear that this is the man?"

"I am."

Again, I felt glad that I was being tried in this country rather than the United States, but on the other hand I wasn't sure that Chapman had been prudent in asking the last question, for the certainty with which it was answered would, I thought, work against me. It was at this point I gave up, losing any interest in hearing more lies from the government witnesses. I had become so bored, disgusted and depressed with the entire charade that I sank once again into that familiar gloomy darkness. I remember a police magistrate and some other official giving their perjured stories, but I was too busy grinning insanely around the court, from judge, to lawyers, to clerks, to jurymen.

I kept my mind busy trying to calculate the length of time it would take a man of my stature and weight to die at the end of a hangman's rope.

## CHAPTER FORTY ONE

I woke from this despair when the name of the next witness, Thomas Allen, echoed around the court.

When Mr. Allen appeared, he was not at all as I expected.

He was a shabbily dressed, stooped, wizened, white haired man who limped his way cautiously to the witness stand, where he read the oath from the card given to him by the clerk. A chair was brought and this witness gingerly lowered himself into it, settling in with an enormous sigh. The Solicitor General, Mr. Molesworth, rose to begin questioning him.

“What is your Christian name?”

The whole room waited for the answer: ‘Thomas’. Instead he surprised us all with his hesitant reply, “Yes, that is the prisoner.” Most of the people there looked around in a confused way, to see if somehow they had misheard the question or the answer. I saw Chapman and Aspinall exchange glances, and the latter clearly had a problem controlling his hilarity.

Molesworth made another attempt.

“What is your name?”

A more confident Allen replied, “No; I have no pension at all; you see, I am rather deaf.”

By now most of the jury as well as Counsel and members of the public gallery were openly laughing. A furious Chief Justice banged his gavel, but not one person would or could control themselves. Even the serious Molesworth was unable to suppress a broad grin. It may have been that we all needed some relief from the sheer tedium of legal jargon and false piety. Furthermore, I found it so exhausting trying to sift through the false testimony offered by evasive witnesses that the words of poor Thomas Allen swept through the court like a cool change. Anyway, etched forever in my memory like a scene from *The Inferno* is the sight of the demented judge pounding furiously with his gavel while no one in his court paid him any attention or even heard his banging.

Part of my joy was the sure knowledge that Molesworth had from the scene before him that if he were ever to extract any useful evidence from this pitiful old man, he was going to have to play the straight man. This he valiantly attempted to do, displaying a face scarlet with either embarrassment or suppressed mirth. His predicament made his performance the funnier for me, and I could do nothing but look down at my hands, in the

knowledge that my shaking shoulders could be seen by all: for once I felt that I did not have to play the fool.

The Solicitor General bellowed, "Have you a store at Eureka?"

Like many deaf people the witness shouted his reply to this first question that he had heard correctly. "I kept the Waterloo Coffee House and Store on the Eureka."

"As you are deaf, will you state what you know in your own way?"

Allen explained that he had arrived back to Eureka from a marketing trip to Melbourne on the Saturday that the stockade was erected. He recounted how the whole bulwark had been constructed in about four hours during the Saturday afternoon. It had simply been haphazardly thrown up around the tents which were already there, and the Waterloo Coffee House and Store unfortunately happened to be within that area. He proudly revealed that the other diggers knew him by the nickname of 'Old Waterloo'. He did not claim that the diggers physically harmed him, but stated that he had been under loose custody in his tent following his return from Melbourne.

"Where was your tent?"

"It was the second tent stockaded around, next to the butcher's shop. All my property was destroyed to the amount of £200. Everything I had was destroyed." At this point the poor old man was reduced to tears.

Molesworth must have believed that he could lay the blame for the unfortunate Allen's loss on me, for he immediately bellowed, "How was your property destroyed?"

"I believe it was set on fire by the police, with all the other tents in the stockade."

Clearly the Solicitor General was disappointed, and quickly sat down.

It was now Chapman's turn to try to maintain some dignity while he cried out his questions to 'Old Waterloo'. "When was your property destroyed?"

No doubt hoping for a more sympathetic hearing from the defence the old soldier continued his litany of complaint. "It was set on fire by the police, and all I had was destroyed, except eleven pounds ten shillings. That was all I made out of two hundred pounds." Allen again broke down at this point of his evidence.

After giving the witness time to compose himself, my lawyer slowly turned and pointed to me. "Do you know this man?"

"I do not, I never saw him to my knowledge."

Turning back to face him, Chapman shouted, "Were most of the tents up before the stockade was constructed?"

“The tents were all up before the stockade was constructed. The stockade was constructed in about three or four hours on the Saturday afternoon.”

As ‘Old Waterloo’ shuffled from the court I felt my spirits lift, for I felt that his evidence supported the complaints which the diggers had been making long before, as well as after the uprising at Eureka, about the corrupt and brutal police. Furthermore, the authorities had tried to portray the stockade as massive fortifications, within which a group of power hungry men had plotted to overthrow the Queen. As ‘Old Waterloo’ was to be the only independent witness for the prosecution, and as the others were either police spies or corrupt senior officials, I had high hopes that his evidence would be beneficial to me with the jury.

But Stawell tried to recover the ascendancy for before he closed the prosecution’s case he tried to implicate me with Raffaello by having the Italian brought into court to be identified by the spies Goodenough, Peters, Heggarty and Donnelly. Though there was no concrete evidence of perjury, Chapman spared no effort in casting doubt on the truth of these four men in particular.

By the time that all of this legal manoeuvring was over, I longed for some more light relief as had been provided by ‘Old Waterloo’, but legal arguments were not over yet. Chapman sparred with both the Attorney and Solicitor Generals as well as with the judge while making arcane legal objections about the wording of the indictments for which I was being tried. His main objection was that most of the statutes under which most of the counts against me were listed had been repealed many years ago in England. He maintained that all such laws had therefore been repealed throughout the Empire, for they had, in the wording of the repeal acts themselves, declared the previous legislation to be void both “within the United Kingdom or without”.

The judge would not hear of it, and resolutely set aside every argument my Counsel made. As the Chief Justice squinted at Chapman, his distaste for the lawyer was clear for everyone in the courtroom to see. He sarcastically asked Chapman “You rely on the words ‘within or without’. Without what?”

My lawyer answered calmly, “It means all over the world”.

The judge said nastily “But within what”.

Chapman assumed a Napoleonic stance and, hand tucked inside his jacket lapel, spoke as the Professor of Law at the University of Melbourne. “It means within the United Kingdom or without.”

Even I could understand that.



This madness must have continued for at least half an hour, and most of us seemed bored except the lawyers, led by the wilfully obtuse Chief Justice.

Suddenly the proceedings were adjourned to give Chapman time to draft the points to which he objected, in order that they could then be formally presented to the judge. Believe me, I enjoyed the quick wash and drink of cold water during that break.

After we returned to the court Chapman went through the travesty of formally presenting his objections, then stood to begin my defence.

## CHAPTER FORTY TWO

“May it please your Honour - Gentlemen of the Jury - It now becomes my duty, and a very anxious one, I assure you, it is, to address you upon the case which has been submitted to you by the law officers of the Crown, in order to charge the prisoner at the bar with the highest offence known to the law, namely, High Treason.”

The jury were paying very close attention to the confident style and mellifluous voice of my attorney, but I was annoyed that he had given credence to the prosecution's fictions by stating that he was anxious. After all, he should have taken the position that he was fully persuaded of my innocence, and therefore was confident that I should be found not guilty.

“Gentlemen, I agree entirely with the character given to the offence by my learned friend the Attorney General; there is in fact, no offence known to the law of so grave and serious a character as that with which the prisoner is now charged because this crime not only weakens the Queen's authority, but also carries awful consequences should any insurrection occur in any part of her dominions. Gentlemen, you are well aware that in this case a large number of Her Majesty's subjects have lost their lives. The loss of the troops has been considerable, and unfortunately, an officer of very high character, a gentleman of very great merit, has also lost his life, in consequence of these disturbances.”

Again I felt disappointed that he seemed to be making the prosecution's arguments for them; suddenly I was seized by a terrible fear that this man whom I had trusted with my life was going to let me down badly.

“Gentlemen, the indictment contains four distinct charges. The two first counts charge an actual levying of war; the two last counts charge that the prisoner compassed, imagined, and intended to levy war. The purpose named in these counts are firstly, to deprive Her Majesty of her royal title and authority over this Colony and, secondly, to induce or compel Her Majesty to change her measures.

“Now I apprehend, gentlemen, that these intentions are none of them proved. There was a great deal of evidence given by Goodenough in the first instance as to the general character of the meetings of the meetings of the three days from Thursday to the Saturday evening. Goodenough described the manner in which the meetings took place on the Bakery Hill, but he did not speak to having seen the prisoner there.”

I was surprised that I was now much calmer as I listened to Chapman's summing up, for he started to lead his audience through the case against me with an impartial sobriety which just might convince the jury. So perhaps I shouldn't worry so much.

"One of the important facts relied upon, gentlemen, was that a flag was hoisted. Now I must direct your attention to the nature of this flag, and to the common practice, of which you have had plenty of evidence, of hoisting flags at the diggings, and therefore I contend that no inference whatever can be deduced from that. One of the witnesses said 'Oh, but it was a very peculiar kind of flag' and therefore he inferred that this flag was evidence of a levying of war.

"Now, gentlemen, it so happens that I know this flag is that which was hoisted and produced when delegates of the Anti-Transportation League paid a visit to this Colony, and if I mistake not my learned friend the Attorney General himself, who was always an opponent of transportation of convicts to these Colonies, himself has acted under that very banner."

There was a silence in the court as my lawyer allowed a very long pause in his presentation.

"In fact, the flag was intended to be a star and a representation of the Southern Cross and if the fact of hoisting that be at all relied upon as evidence of an intention to depose Her Majesty, then I can only say that my learned friend and myself ought to be included in this indictment!"

Again, with the confidence of a raconteur, Chapman paused to let barb find its mark.

"You have also general evidence about flags. It is the practice all over these Colonies, I don't care where, for auctioneers, shopkeepers, tradesmen, and merchants, to hoist flags at their stores; and it is a practice, as we have heard from the witnesses, which prevails to a far greater extent at the diggings, and especially at Ballarat, than in the larger towns. You are aware, gentlemen, that flags are hoisted at the tops of houses; and auction-rooms, and stores, and in all possible positions. It is a common practice, and it is a much more conspicuous practice at the diggings; and I say, gentlemen, that no inference whatever can be drawn from the mere hoisting of a flag as to the intention of the parties.

It may have been that the diggers hoisted a flag in the same spirit as we hoisted the anti-transportation flag because they did not like licenses. We hoisted that flag because it was an indication that wherever it was hoisted the League was present, and the League was a body of men that intended to do everything lawfully in its power to get rid of

transportation of convicts to these Colonies, and in like manner it might be that these men hoisted this flag to show that they would use every lawful means in their power to get rid of licenses, and that flag having been used for the purpose of an anti-transportation flag, has since been used as an anti-license flag; that is the inference I draw.

“We have it in evidence that they had a meeting on Wednesday. What was that called for? A placard has been produced to you, but can any treason be extracted from that placard? It was a public meeting to consider the expediency of licenses, and there was a determination to resist the law as to licenses.”

In his impartial manner and calm voice the professor took on the task of teaching us all some law.

“Some reliance is placed upon a few words that were put at the bottom of the placard, but what are they, ‘Bring your licenses, they may be wanted,’ and for what purpose? Suppose they did intend to bring their licenses to burn them, what effect would that have? It would be injuring themselves; it would have just the foolish effect, I may say, upon the license fee that I might produce by burning some of the notes of the Union Bank of Australia which I may happen to have in my pocket; it would be simply injurious to myself. As the law stood, supposing they did burn their licenses (and the evidence is very insufficient on that point), the fact would simply be that not having licenses to produce, they would be compelled by law to take them out again.

But where is the evidence that they did burn their licenses on that day? Nowhere at all; no man saw a single license put into the fire; one of the witnesses says he heard licenses called for, and he then saw some papers torn up; another of the witnesses says he did not see the licenses burnt but he saw smoke, and I asked him if there was anything peculiar in the smoke that led him to infer that it was the smoke of licenses, and he was foolish enough to say, ‘Yes, he thought there was.’

Gentlemen, a witness who would say that, and tell you that because the smoke was unusual in quantity, therefore it must be the smoke of a quantity of paper, and that therefore he inferred it was licenses, and upon his inference ask you to say that this was burning licenses, shows an animus against the prisoner, which I shall point out to you presently other witnesses have manifested also.

I say, therefore, that up to Wednesday it was a perfectly lawful meeting. What takes place next? If the authorities had done their duty carefully, firmly and discreetly, I have not the slightest doubt that the whole of the proceedings might have been stopped after that because there is that reverence for authority existing in the mind of almost every British

subject which would have induced them to pause before they proceeded further; there is, in fact, what Carlyle terms a reverence for the constable's staff, and if the authorities had pursued a wise and discreet course, coupled with firmness, the whole proceedings might have been stopped on Thursday, and we should have heard no more about it.

“Arrests had taken place in consequence of an outrage, and the men were brought up, legally convicted and punished according to law, and if the magistrate had exercised equal discretion on the Thursday the whole of this proceeding would have been stopped. But what was their conduct? Why in the midst of this they instituted a ‘digger hunt’ or ‘license hunt’; that is, they sent out a number of troopers; one of the witnesses says there may have been twelve, and he could not say but there might have been twenty; they sent out from twelve to twenty armed troopers seeking for these licenses, demanding them, and I believe making arrests as they pleased.”

The Chief Justice, no doubt noting that Chapman was doing far too well in spellbinding his audience interrupted bluntly, “There is no evidence of the troopers having made arrests.”

Chapman didn’t turn a hair at the unwarranted intrusion by the judge, not even acknowledging the interruption.

“At all events, gentlemen, there was what is generally called a license hunt or digger hunt.”

Here this biased judge again tried to disrupt the flow of Chapman’s reasoning; but in doing so simply revealed his own ignorance. “I do not know what a ‘license hunt’ means; the evidence is simply that these parties went out, according to their practice, for the purpose of searching for licenses.”

Chapman ignored him again, like a law professor ignoring a half-witted student for the good of the greater number of well-informed students in the class.

“Well then, gentlemen, it appears that a number of troopers, about twenty, went out for the purpose of collecting licenses, and there was more irritation and exasperation produced by this indiscreet conduct, as I would simply call it, instead of the rash feeling which had existed being appeased. In this manner this mutual irritation on both sides seems to have gone on for two or three days; the diggers, *or the insurgent portion of the diggers*,” my lawyer emphasized this phrase while looking directly at the jury, “then collect - for I am not to suppose that all the diggers were in a state of insurrection at the time.

I shall call your attention, gentlemen, shortly to the evidence of Goodenough, and his evidence goes to this, that Lalor's exciting expressions, when he was addressing the assembled people from the stump, were that they were to resist if attacked by the troops. There was no evidence of any intention to attack. There was an arming, no doubt, but there was no evidence of any intention to make any attack upon the troops, and I think I will be able to convince you before I have done that that attack was a sudden thing arising from the two hostile parties meeting, just as a riot in the street is very often caused from the sudden meeting of two or three persons, and then accident may set the crowd on fire; so here from these hostile parties meeting, the minds of both parties being inflamed, they fire upon each other, and this is what is called treason.

Well, gentlemen, what does Goodenough say? Why he says that Lalor, from the stump, told them to join as volunteers for the purpose of drilling; he tells you also that they did drill in five different squads, some of them armed differently, and then he tells you of that address of Lalor's to them to the effect that they were to resist if attacked by the troops. Then, gentlemen, I must remind you of the demeanour of this witness, and of the tenor of the whole of his evidence. I think he gives a sufficient description of himself to induce you to exercise great caution in receiving his testimony.

There is positive evidence that four men were sent forth disguised in various ways: Goodenough was disguised as a digger, Peters as a storekeeper, and for what purpose? For the purpose of acting as spies upon these men. Now, men who will be guilty of that extreme meanness of being spies under these circumstances, I say, are men who will not be very scrupulous of telling a lie when they come into the box. I believe it indicates a low moral condition which an honest mind naturally revolts from; and I have always found that where there is a low moral condition it extends itself to almost every act of a man's life; and with a man who would be guilty of a meanness of that kind I should be very cautious in receiving his evidence, and should require all the statements he made to be corroborated.

What does Goodenough say? He says that Lalor addressed the assembled crowd several times at least three times; that he addressed them for ten minutes at a time. I then asked him whether, in the whole, Lalor had spoken for half an hour. He said, yes, he had. Goodenough had ears for nothing except those few expressions of Lalor which are now intended to convict the prisoner at the bar, who was not there at the time, of high treason. This *IMITATION* digger reports with extreme distinctness a few treasonable or seditious words uttered by Lalor; but he has no eyes nor ears for anything else.

Now, *I* say that is a suspicious circumstance. And the conduct of every one of the witnesses was precisely similar: they heard nothing but what they knew would be against the prisoner; everything they heard against the prisoner their ears were open to; but when there was a single sound uttered in favour of the prisoner their ears were shut like the safety valve of a steam-engine; and whenever there was any circumstance that seemed to tell for the prisoner, they were ready with some explanation that would make it seem to tell against him.

Now, gentlemen, upon the evidence we cannot resist the fact that the prisoner at the bar was actually taken within the stockade, because he was seen to be taken there by many persons, and he was seen in company by many persons. I do not resist that fact but I do withhold my belief from the fact that he was seen firing, because the witnesses who speak of his firing were not in such a position to do so. Of course when firing is going on it is very difficult to measure distances, because, however great may be a man's courage, it is quite impossible, when he is liable to be shot, for him to be wholly cool.

The most veteran troops at the first fire feel particularly agitated. In the midst of this agitation produced by the two signal guns, followed by the volley from the stockade, and the firing from the troops, I would ask you whether a man would be likely to distinguish the prisoner at fifty yards distance in the grey of the morning, before the light had thoroughly developed itself. Certainly there was hardly sufficient light to see clearly at such a distance and under such perturbation of mind, and yet the witness Lynott, never having seen this man before, distinctly swears that he saw him fire a gun.

Now, gentlemen, I think I may offer a reasonable and even a charitable interpretation as to the desire evinced by the soldiers who gave evidence to convict this man. It is in one sense creditable, if it does not carry them too far. All the witnesses have told you of the manner in which Captain Wise was beloved by his corps, not merely the company which he commanded, but by every officer and man in the regiment. In fact, I believe not only in his own regiment, but every person who came in contact with him in private life, felt a pang as if he had lost a friend on hearing of his death."

Did he go too far in this eulogy to Captain Wise, I wondered. On reflection though, I think his dispassionate account of the prosecution case may have helped my cause: I certainly hoped so.

"Then, gentlemen, that being the state of feeling with reference to Captain Wise, it is natural on the part of these men to feel great animosity to those who may be supposed to be connected with his death. One of the witnesses went so far as to say that he saw a

gun pointed at Captain Wise, and that he fell directly after that gun was discharged. Now, gentlemen, this charge against the prisoner at the bar is a charge, not of the murder of Captain Wise, for there would be no evidence of that, but it is a *charge of HIGH TREASON*, in which all other felonies or murders merge; no other felonies or murders are of any consequence, and they are no evidence in this case unless they go to support the charge of *HIGH TREASON*."

My Counsel reminded his audience that I was charged with treason and not murder, by repeating my actual indictment slowly and laboriously twice in the same sentence. Just in case they should forget.

"Now, I think we are entitled to assume that the attachment which these men bore to Captain Wise has induced them to stretch their evidence a little too far; I do not say intentionally to commit perjury, but to look as it were through a coloured medium, and because they saw certain guns pointing in that direction, readily to believe that the wound or one of the wounds from which Captain Wise died was inflicted by a particular hand. But there is a piece of evidence which rather goes against that, and it is this - another of the military witnesses said that he saw the prisoner at the bar discharge one barrel of a gun. Now, Captain Wise was wounded by two shots, and it is quite clear, therefore, that no evidence whatever can be received that either one of these wounds was the cause of Captain Wise's death. All that I wish to dwell upon for now is that you do not permit the strong feelings of these men, caused by their love of Captain Wise, to bias their testimony, or to present it to you in a stronger light than it deserves, as I believe they have done. It is for you to judge that, it is a matter for great caution, and you will exercise that caution, I am sure, in the reception of their testimony.

Gentlemen, the point I wish to press upon you is this, that as to the first part of the testimony produced by the learned Attorney General, to prove that the general intention of the parties who then met was to upset the Queen's authority or to force Her Majesty to change her measures; so far as the prisoner at the bar is concerned, we hear nothing of him until some subsequent period of time.

The first time he is seen is on the Saturday. The evidence of Goodenough goes to previous meetings. I contend that those previous meetings were for a particular purpose, that they originated in a lawful purpose, as is evinced by that placard - a purpose for which all Englishmen may unite together and may meet - and that from the indiscretion of sending out troopers immediately afterwards, armed as it were to the teeth (and certainly armed troopers are not a proper instrument for collecting a tax), this led to the



unfortunate collision which took place on the Sunday morning between the troops and the insurgents in the stockade. They were driven to that and had no purpose whatever, such as is stated in the indictment, of inducing Her Majesty to change her measures by an armed resistance, or of deposing Her Majesty from her lawful authority. Unless you are convinced that these general purposes are intended, as my learned friend very properly opened, then, although it is a seditious meeting, although it may be a very unlawful meeting, and may subject the parties engaged in it to very severe punishments, yet it does not amount to high treason. It does not amount to high treason unless the purposes named in the indictment are fully proved to your satisfaction.”

He suddenly turned and pointed to me.

“Now, gentlemen, look at that man at the bar; do you suppose that that man, present as he may possibly have been, was present for the purpose of deposing Her Majesty from her rank and authority and station and kingly title in this Colony; do you suppose that such an intention ever entered into his mind; do you suppose that there was any intention in his mind to induce Her Majesty generally to change her measures? No, he never thought of such a thing.

The meeting of Wednesday no doubt was a meeting for the redress of grievances and the meetings afterwards were for the purpose of resisting that mode of collecting licenses by armed troopers which we have heard described. And then to what was it confined? Why - to resisting the troops if they were attacked. And how were the men attacked? Why - on the Sunday morning, sleeping within the stockade they were roused by an armed party marching up towards them.

Gentlemen, if an armed party of soldiers march up to my house, unless they show authority, I am entitled to fire upon them, and there is no evidence here of authority being shown. Even under the Smuggling Act, unless Custom House officers show their authority, if they fire upon smugglers, and those smugglers resist them, the want of showing their authority is sufficient to reduce murder to manslaughter. There is no evidence here that any care was taken to show that they were authorised to go up to this stockade for the purpose of taking it; and I say, therefore, that the resistance, injudicious and criminal as it may have been, did not amount to high treason. In fact, there is this evidence, that the magistrates intended to read the Riot Act, but were prevented.

If they had read the Riot Act, what would it have been? Why, in the first instance, it would have been a riot and if resistance had taken place it would have been - what? Why an armed riot. It would not have amounted to *HIGH TREASON*; the offence cannot

amount to high treason unless you are fully convinced that the man at the bar intended to depose Her Majesty from the style, honour, and kingly name of the Imperial Crown; or unless he intended, by an armed resistance, to induce Her Majesty, or as I will concede, Her Majesty's Government here, to change their measures. As to the lawful attempt, which I call it, which was made on Wednesday to induce the Government to repeal the license tax, is that to be called treason? No, certainly not; *IT IS WHAT EVERY ENGLISHMAN MAY DO!!*

Well, gentlemen, the conclusion to which I have directed your attention is this, that the meeting of Wednesday was a perfectly lawful one. There is no evidence whatever given to show that there was anything unlawful which took place at that meeting. Then, gentlemen, that being lawful, what is the next step in this transaction? Why, then ensued a raid for the purpose of collecting the obnoxious tax. Then, gentlemen, why were the troopers employed at all for the purpose? Why were not proper collectors employed to ask for the license fee, or to collect the licenses in some regular manner, and to inspect licenses at regular times? These men seem to have had a perfect discretion to go out whenever they pleased, rendered angry by the jeering and 'Joeings' constantly levelled against them on the diggings. Whenever they chose they were ordered out to inspect licenses; sometimes they were inspected twice in a week by directions, so that a man, at all events, was liable to be called upon eight or nine times a month to show his license.

But in point of fact the license was much more frequently asked for, because there appears to have been so little organization amongst these license hunting parties, that two separate parties might travel over the same ground, and it might happen that a man was asked twice or more on the same day for his license. Now, I ask, gentlemen, is not that vexatious? These men were driven to hold meetings, that certainly afterwards became unlawful; they were induced to hold meetings at which they armed; they were unlawful meetings I admit, but they were not high treason. They might have been indicted for holding unlawful meetings; they might have been indicted for conspiracy; they might have been indicted for sedition, if their speeches were of that nature; but there was no treason in those speeches: they were unlawful, but not treasonable.

Then these men, driven as it were by the vexatious course of conduct adopted in searching for licenses, and the vexatious mode in which the license fee was collected, what do they do next? Why they raise a stockade for the purpose of guarding themselves from the attacks that were apprehended. What does that prove? The only evidence given as to intention throughout the whole of this case is the words attributed to Lalor, and what does

he say? Why he says, 'If the soldiers attack you, resist them,' and that is what they did; and I say the soldiers marched up there without showing sufficient authority, and that that want of authority stripped the case altogether of its treasonable character.

It was an attack made on the part of men who were behind that stockade for the purpose of defending themselves against troops who had not put themselves in a lawful position, either by reading the Riot Act or by showing some authority under which they acted. Because, as I have said before, if troops march up to my house, and attack that house, I have a clear right to resist them; they must show authority, and if they have any person to arrest, they must show a warrant. Here there was no authority shown; there were no warrants shown; in fact, an attack was made, and the troops have since been thanked by His Excellency Governor Hotham for making the attack before any attack was made on them, and the resistance then was that species of resistance that Lalor recommended, namely, to resist if they were attacked.

Then, gentlemen, I must again remind you of this flag which is so much relied upon, which is an old acquaintance of mine, and I hope an old friend of yours. It is a flag under which my learned friend has already enlisted for another purpose, and under which I have also enlisted. Let me remind you once more that the hoisting of flags is a common thing on the diggings; we have evidence that 200 are to be seen flying at the same time there. One witness said that every store had a flag, another witness said every tent had a flag; most of the stores are tents, and therefore we may consider the word 'tent' almost synonymous with 'store'; every person hoists a flag; what he means by it we cannot tell. That flag once had meaning which I understood - what it means now we cannot say; probably it meant that the flag was used by a body of men who were united together for the purpose of obtaining the repeal of the license fee. Gentlemen, I ask you therefore once more, upon the whole of this testimony, whether you will deliberately upon your oath as twelve reasonable men come to the conclusion that that man's intention was to upset the Queen's authority in this Colony, or to induce her to change her measures; because unless you can come to that conclusion, however culpable that man's conduct may have been, it certainly does not amount to high treason."

This masterly, rational and fair presentation of our case had not, I thought, been weakened by our not having produced witnesses of our own. I hoped the jury had been as spellbound as I. I had read speeches of the great eighteenth-century rationalists such as Thomas Paine, and I thought that this summation must have rivalled even them. This

advocate had all the theatrical gesticulations at his command, and a well modulated voice to present this most reasonable defence.

My only fear was that it left one feeling emotionally unmoved. It had been a clinical dissection and demolition of the Crown's case. But was it sufficiently emotive to give the jury more than legal grounds to acquit me?

## CHAPTER FORTY THREE

I had no time to continue these gloomy thoughts, for as soon as Chapman sat, Aspinall rose. He looked well-groomed and, bewigged as he was, he took on some of the courtroom dignity. However, he seemed somewhat flushed, and I could not help speculating that he might have been on the brandy the night before. His voice was not so commanding as Chapman's, and it was with some degree of trepidation that I listened to his closing argument on my behalf.

"May it please your Honour – Gentlemen of the Jury – In this case, in which, from the importance of the charge of high treason, two counsel are allowed, I feel it my duty in a few words to follow my learned friend, and to add what little I have to say to what he so ably said.

"The beginning and end of his speech are that he points to the man in the dock and he asks whether you, on the part of the British Crown, would be liable to alarm from any attempts of that individual to subvert the Constitution to which you are so attached; whether you can suppose for a moment that he could ever conceive such a dream."

Here his voice, with a softer Irish accent, began to drip sarcasm, and I wondered if his attempt to stir the jury might not be rather too strong. But there was nothing I could do about that now, so I could only listen.

"Why gentlemen, I believe myself that the ridiculousness of it must be as patent to the law officers of the Crown as it is to you; and I must say that for my part I feel for the position of my learned friend the Attorney General in conducting this prosecution. No doubt it was hoped that that amiable looking ruffian, Hayes, would be tried first, and if that had not been successful my learned friend had then the foreign anarchist Raffaello, and failing him, there was the anonymous scribbler Manning; and however small his chance of success in those cases his position would not have so positively ridiculous in prosecuting any of them; and there would have been this" here he turned and pointed to me, "*black* man in reserve in case you declined to convict a Briton!

"Gentlemen, there he is, accused of an intention to subvert the British Constitution and depose Her Majesty, set up here as a sort of political Uncle Tom, and you must look upon him, I suppose, either as a *stupid* negro, a *down south* man who had no conception of treason in his head, or as being actuated by the eloquence of Lalor on the top of this stump, and actually prepared to defend himself, and that he had some idea, that though a

*negro*, in any British possession he was entitled to his liberties. Here, gentlemen, it is no longer 'The Queen against Hayes and others for High Treason,' but 'The Supreme Authority,' as we are told by my learned friend the Attorney General, against this person Joseph, vulgarly and, as it appears, illegally called 'Joe', and he is accused of 'having levied war against our said Lady the Queen, within that part of her dominions called Victoria', and this is a most heinous offence, so we are told, and so we believe.

"But the question is, to convict the prisoner, says the Attorney General, you must be satisfied that there was an insurrection, accompanied with force, and for a public object. But, gentlemen, you must not be put off the scent and you must not be tempted to do a cruel thing by those insinuations which have been thrown out that this man is supposed to be here charged with high treason, but that that is a mere technicality, and that you are, in fact, trying him for the murder of Captain Wise.

"Why, gentlemen, if he were on his trial for the murder of Captain Wise, you know there is no possible evidence against him; and I consider it a most extraordinary, and not a very creditable thing, that when he is being here tried upon one charge, you are tempted to look upon him, not as a dangerous traitor, but as a person whom you may as well hang because he shot Captain Wise. And that is the way in which this case has been presented to you. It would be simply ridiculous folly to ask an intelligent jury to convict that man of high treason, or to suppose that he had a single notion of high treason in his head; and the thing would be scouted out of Court only that it comes backed up with this charge of shooting Captain Wise, and you are to be told that you may, therefore, convict him of high treason, which will do as well as anything else - that you will convict him under the name of high treason for shooting Captain Wise. But, gentlemen, Captain Wise had two wounds, and whichever of those wounds he died of, at any rate there would be a question as to whether the prisoner had anything to do with either of them. You saw in the evidence here throughout that everybody was firing at the same time, and this man, this black fellow, who had been sleeping in the stockade the night before, fired in a particular direction at a time when various other people were firing in the same direction; and that Captain Wise fell somewhere about that time. Now, if that is the fact, then I say it is obviously unfair to this prisoner, and too cruel to bring him here charged with high treason, and then make the death of Captain Wise the whole case against him."

My first reaction to Aspinall having brought the question of my race into play was outrage, then I began to realize that he was just building on the foundation of my acting as a stupid oaf for the sake of the jury. I, and many of my colour, had for centuries, as slaves

for various despots, resorted to acting the fool in order to save our necks. I had to remind myself that this lawyer was trying to do just that for me, but I was not at all comfortable about it. Nor could I blame him for using the trump card that Chapman, if I had heard him correctly, had only obliquely referred to. It was astounding to me to think that an accusation of racial prejudice made against these law officers of the Crown might actually win me sympathy in this foreign land. Aspinall continued to press his point about the racially-motivated charges against me to a point beyond which I would have ever dared to go.

“It is well enough talking about these soldiers and their devotion to their officers, and so on, but we cannot be so devoted to our officers as to convict people because they are the *blackest* we can find in the place. And you are also to consider that nearly the whole of the evidence given would really go to show that the Crown seemed to have considerable doubt whether there was a rebellion at all. The majority of the men that came into Court had nothing to say about this black man,” he said, pointing to me.

“That man whose very clothes were a living lie and who was trotting about amongst the diggers giving his views, and who offered to stand up for his rights and liberties, who was warned by some very facetious officer not to look too respectable, and who went in amongst the diggers for the purpose of inciting them, and who gave us a great deal of evidence about the drilling, could not connect Mr. Joseph with those meetings.

It does not appear that he is a public speaker; and it does not appear that he could write; and therefore he could not have signed any of those important State documents of which this Colony is so profuse.

So far as I can see he is never heard of till Friday, when it appears, according to the evidence of one of those spies, he was drilling. He was drilling, according to Mr. *Spy* Peters, in this company with Raffaello ; according to the other spy, Raffaello was with a company composed, as he believed, entirely of Italians and Frenchmen. This gentleman I do not think to be either a Frenchman or an Italian, although I do not suppose, so far as the first spy's evidence goes, that it would take a considerable amount of persuasion to make him believe that this individual belonged to either of those countries.

It comes, then, gentlemen, to this. There is no pretence that he was at the first meeting. There is no pretence that he has ever been talking seditiously to anybody. There is nothing to connect him with this transaction except this drilling the Friday, and his being in the stockade on the Sunday. It is a matter of public notoriety that nobody was let go out of the stockade.”

He turned again and pointed at me again. "This person declines to be made a hero of, and instead of his having any strong desire to be defended on constitutional grounds, my instructions are that his simple answer to all this charge is, that his tent was, like this respectable Waterloo man's which was burnt down to his inexpressible disgust, within the stockade, and that he was there also. That his license was in his pocket at the very moment he was taken so that evidently he had not burnt it; and there is his assertion for whatever it is worth, that he did not wish to subvert the British Constitution, and that if *you* are contented with it, *he* is."

Here Aspinall paused so that laughter could erupt briefly in the courtroom before the judge's gavel descended noisily. "The worst that appears to be attempted to be proved against any of these people, any of the *great* fellows even, the utmost they seem to have done is to hold a meeting, and there is something about a request to burn licenses, which is very much like that ingenious Irishman's plan of ruining the manager of a bank by burning his notes."

Another pause: more laughter.

"Supposing they did hold a meeting, and supposing they employed their time in purchasing licenses, and supposing they chose to burn them, I imagine that burning a license is a luxury which as long as a man has got a license to burn he will not be deprived of in a free country.

Then, again, when we come to these meetings, we find that the utmost the first witness could say when he rushed up into the box, having got back to his uniform, was three sentences. This gentleman had come here against Hayes, and you will remember the excessive glibness with which he rushed off about Hayes, who had been speaking in an excited manner, of which speech this witness recollected three sentences, those sentences being precisely the ones they wanted, and which he had left his uniform at home to get. All that that man said about Lalor, perhaps one of the traitors unknown, was this (and that appears about the extent of what he or any of them did, and that seems to have been *a most awful crime*), that under a semi-military Government where they had been exposed to the torment and torture of these police; where a party of fifteen might go out on the same day to collect licenses in the same district, and ask the same man one after the other for his license which must be rather tiring, at all events, to the subject of the enquiries - the utmost Lalor said they were to do was - what? To join together for self-defence, which I believe to be the first law of nature, and as good as any of those passed in the Legislative Council of this interesting Colony.



Gentlemen, the thing just comes to this - nothing whatever can be proved against this person; there would be no attempt on the part of the Crown to prove that in the course of any intellectual operations this man had been busy in attempting to subvert the Constitution. They do not want to have him at any meeting, or put him forward in any way except as one of the herd who were dragged into this movement, and he is now pompously called a gentleman who levies war against the Queen.

There he is, gentlemen, and the question comes to this, as to the testimony on which you are asked to convict him. Now, a spy's testimony is worth this. He begins by telling you he has got his information by a course of lying and deceit; he has been betraying men of his own class, and been selling them to the Government. A spy has no object or no reason so strongly upon him as that of doing service to those who send him out, and if he goes to a meeting his business is, as he pretty generally shows you, to go back with the largest possible amount that he can conveniently provide of the kind of information he was sent there to get. It is a question of imagination purely.

You are told by one of these spies that this man was with Raffaello; then you are told by the other that Raffaello had a company composed entirely of Italians and French. The other witnesses had nothing to say to show that there was a rebellion. One of them says the work was stopped out of curiosity, and you can only get just a few to tell you anything about the prisoner. One of them was Mr. Carter, that valorous gentleman, who it appears after the thing was over went to a tent, and having ascertained that there was somebody in it, very judiciously and prudently sent two soldiers in to bring them out, and I believe on an average got them out. When they got them out, he again judiciously handed them over to the 40th, the soldiers having been made the jackals of the Police, the Carters bringing the men out of the tents unarmed, and the Wises getting shot to enable them to do so."

I was, like the rest of the court, shocked that he should speak of Wise in less admiring and unctuous tones than his colleague Chapman.

"You then come to the evidence of the soldiers, and the utmost they have to say is, that they got up on a dark morning, before anybody else was stirring about, and went off to the stockade, and curiously enough, on their way, when it was so dark, before they got there they were met with some firing from the stockade.

Well now, gentlemen, it is just possible that those gentlemen who had been so busy going to diggers' meetings, talking politics, and when need be running away with the expressions and words of the diggers, it is quite possible for one of these gentlemen to have been in the stockade, and to have been amusing himself with these preliminary shots,

by which the guilt is attempted to be fixed on the insurgents, as they are called, and why but for this, for the purpose of letting the military, who were coming up in the dark, know precisely the locality of the stockade, or to put the diggers in the wrong by making them strike the first blow.

We know that His Excellency sent a very polite letter to Captain Thomas, in which he informed him that he had acted very judiciously in attacking the insurgents, instead of waiting until they were the aggressors. So that when you consider this Sunday morning which was so piously and judiciously chosen for this onslaught by the troops, you may reasonably judge that there is a very good chance of these shots having come from someone besides those men, whose whole course of proceeding throughout had been, that at least they were tired of the license fee, and this intolerable digger hunting, or whatever it is to be called, and for the future they would passively resist, or at least possibly would exercise the right of self-defence if attacked.

If that is the case, the thing that next presents itself to your minds is, how is it and why is it, when it appears all these prisoners were taken, when there was a rebellion, and all this consternation throughout the country, how is it that this is the first person, and the only person, you have got to try?

Why, even a respectable American would scorn to try him, and we are supposed to be addicted to the Americans. There is no law against burning licenses in this Colony; although this Colony differs to a great extent from England, and although the Attorney General, in his ardour for the supposed inferiority of this Colony to Great Britain, was extremely anxious to stop the right of challenge, and although the prisoner was brought to be tried from Ballarat, where he was known, to Melbourne where he was not known, and is now put before you as a man whom you might as well hang as an example.

If that is the sort of British Constitution that he is to express his admiration for, why it is quite clear he would not be a Briton if he did admire it; and I must say, that I should like to see this Colony very much more like Britain than it is.

Gentlemen, this prisoner's plain and simple story is that he arrived at Ballarat; that he had his license upon him; that his tent was within the stockade, like that of that of that Waterloo individual; that he was there with no more idea of subverting this apparently very shaky British Constitution, than he had of flying.

He was there as they all were, trying to get his living, and I dare say objecting to being bullied and tortured by police as much as Englishmen do; and it is very remarkable

that he did not, as an individual, object to this license system; and nothing is proved until he is proved to be in the stockade.

And then there is that cruel and extraordinary attempt to connect him with the death of an officer, whose death it would be impossible to ascertain the cause of in the melee, if you were to try for ever. If it was so easy to ascertain the cause of death, and how persons died, and who died rightly or wrongly, why, gentlemen, let some of the witnesses tell us the result of all the coroner's inquests there. Captain Wise died, at any rate, in the discharge of his duty, and in the aid, unfortunately, of these police; and to attempt to connect his death with the firing of this man is to ask you to forfeit your oaths by which you are to consider whether this person has attempted to depose the Queen, or induce her to change her measures - it is to ask you to forget that, and to ask you to say, 'Well, we may as well convict him, because perhaps he shot Captain Wise - somebody did it - it is a most cruel and bloody thing, and we may as well convict him.'

Nothing is proved against this person but that he was in the stockade, and his statement shows why he was there; and admitting even that there was a *black* man there, I cannot go quite so far as my learned friend in assenting to the capacity of the witnesses to identify him. I would no more know one black man from another than any one, except its mother would know one baby from another, or anybody except a squatter would know one sheep from another; there are plenty of black men on the Gold Fields, and it is almost impossible for anybody but a slaveholder to know a negro from his fellow.

Mr. Carter tells us that he found him unarmed in a tent; it is highly improbable that he would have been found at all if he had not been unarmed! The fact of his being a prisoner is a great evidence that he was not armed, and therefore it is a question whether you would be persuaded, from the fact that an officer has died, that this person was intending to depose Her Majesty, or to alter the laws of this Colony. If you suppose he was, then perhaps the best thing will be to let it go forth that there was a solemn array of Judge and jury and the law officers of the Crown to try this person on the supposition that it was his intention to destroy the Constitution of this Colony; and for that purpose he was levying war - and for that purpose leading on all the Irishmen, Scotchmen, foreigners, and others, to the number you have heard spoken of.

If you do so, I think you will live to regret it.

I think it is only too possible and probable in the course of these trials even, for it may come out any day, that any day there may be forthcoming evidence convicting the real man who shot Captain Wise; at any rate there have been several persons talked of, and

plenty of doubt on the subject, and indeed on the part of some people there have been boasts that they have been the cause of the death of this gallant officer. Any day we may hear who it was, and in the meanwhile you will have convicted this man of being a traitor, because in the same direction in which he fired Captain Wise fell.”

With this sober word of caution, Aspinall quickly sat down.

This speech absolutely took my breath away, and I was sure, because of the absolute silence for a minute or two, that most of the jury as well as those in the public gallery shared my reaction. It took me a very long time to digest what the junior defence lawyer had said. He had coldly portrayed me as a sort of sub-human being, incapable of thinking, writing or leading other men. But considering his line of argument in the context of my defence, for some reason the patent insults did not cause me pain. Though we had verbally sparred, and I had felt a deep distaste for him, during the course of the trial my feeling for him had changed to a sort of grudging admiration.

This man had a way of being brutally frank, and I felt that the law officers of the Crown, as well as the prosecution counsel, and even the judge might have been chastened by his scathing criticism of having a riotous black man in reserve to hang, if the jury refused to execute a Briton: for Briton read white man. In fact, the closing arguments for the Prosecution became more a self-defence against Aspinall’s thinly-veiled accusations of official racism, than a summary of the case against me.

While Stawell and the Chief Justice whined and carped through their respective summing up speeches I was preoccupied with dealing with my own reaction to the words of Aspinall. I no longer detested him, and I felt great admiration for his willingness to introduce a passion into his speech, which Chapman had not. So on the whole I felt that Aspinall’s moving plea for justice for me dovetailed perfectly with the rationalism and logic of my senior counsel. Whether I lived or died as a result of the jury’s decision, I felt an overwhelming sense of gratitude to these two men who had provided me with a priceless defence: men who insisted in representing me at no cost, and yet had both tried their utmost to ensure my acquittal.

The jury filed out and I awaited my fate.





