



LIBERTY IS RARELY LOST THROUGH REVOLUTION—the sudden, violent upheaval of arms. Liberty is usually lost through devolution—the slow, imperceptible erosion of the animating principles of freedom. Every generation must guard against such erosion by shoring up those principles—or risk losing liberty altogether. Without vigilance and courage, a day may come when this generation awakens to find the America we know and love has become a mere memory of days long ago. In its place will lie the reality of a liberty-less land.

America's founding generation understood the delicacy of liberty. They understood that inattention and cowardice to guard liberty could shatter it. As Justice Louis Brandeis said, our Founders "believed liberty to be the secret of happiness and courage to be the secret of liberty."<sup>3</sup> The

## O AMERICA!

founding generation possessed courage in excess. They demonstrated their courage when they heeded the warning of George Whitefield, the revivalist minister from Great Britain: “My heart bleeds for America. . . . There is a deep laid plot against both your civil and religious liberties, and they will be lost. Your golden days are at an end. You have nothing but trouble before you.”<sup>4</sup> When trouble came a decade later that generation met it with pluck and warded off the fate Whitefield predicted.

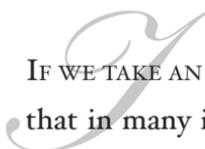
Like the Founding Fathers, Ronald Reagan also knew how easily America might lose her liberty. And like Whitefield, Reagan also pronounced a sobering truth, advising his and future generations of liberty’s perilous existence:

Freedom is never more than one generation away from extinction—we didn’t pass it to our children in their bloodstream. It must be fought for, protected, and handed on for them to do the same, or one day we will spend our sunset years telling our children and our children’s children what it was like in the United States when men were free.<sup>5</sup>

The question for us is simple: will we meet the challenge of fighting for, protecting, and passing on liberty with the same courage and wisdom as our forefathers?

To answer this question, we must first understand the state of liberty in twenty-first century America. We must also understand how we arrived at this state and what we must do to secure and maintain liberty for ourselves and our posterity.

### THE STATE *of* LIBERTY TODAY

 IF WE TAKE AN HONEST LOOK AT FREEDOM, we must conclude that in many important ways we are more free than were our fathers and mothers of the founding generation. This is especially true for African Americans, Native Americans, and women. Yet, in significant ways we are less free than those who founded the United States.

Advances in technology, large-scale corporate fraud, and the ever-present threat of terrorism have put us all under the ever-watchful eye of government. And for more than a half-century, government entitlements have reduced many of our fellow citizens to wards of the state. At every turn, government bureaucracy, at all levels, demands more

## O AMERICA!

from each individual and business. We pay the bills in dollars and red tape; but, the real cost is paid in liberty. We are no longer masters over our public servants; we are now servants under our public masters—a fact our forefathers would find distressing and indefensible.

But our decline in liberty did not occur in a mere generation or two. Rather, the slow erosion of individual freedom began in the early 1900s with the rise of the Progressive Era and its insistence on interpreting the Constitution, not according to the originators' intent but according to our ever-changing culture. As Progressives saw it, the Constitution must flex and bend with society's twists and turns. No longer should the nation adapt to a fixed point in the political sky. The polar star must move with the turning of national circumstances. Or, as was popular in the language of the time, the Constitution must evolve. Constitutional scholar Ronald Pestritto and historian William Atto observed:

The Progressive Era was the first major period in American political development to feature, as a primary characteristic, the open and direct criticism of the Constitution. While criticism of the Constitution could be found during any period

of American history, the Progressive Era was unique in that such criticism formed the backbone of the entire movement. . . . [Progressives] knew that the limits placed on the national government by the Constitution represented major obstacles to implementing the progressive policy agenda. Progressives had in mind a variety of legislative programs aimed at regulating significant portions of the American economy and society and at redistributing private property in the name of social justice. The Constitution, if interpreted and applied faithfully, stood in the way of this agenda.<sup>6</sup>

The Founders wrote the Constitution in permanent ink, but in the hands of Progressives the ink began to fade.

Theodore Roosevelt, considered the first Progressive president, reshaped our understanding of the presidency, transforming it into a more energetic and dominant power among the intended constitutional equals of the legislative and judicial branches. Roosevelt's presidency is now the model for the modern presidency, regardless of party.

It was Woodrow Wilson, however, who significantly smudged the line between liberty and tyranny. In his 1913

book, *The New Freedom*, Wilson compared the Founders' writing and understanding of the Constitution to mechanical science—a completely wrongheaded view in Wilson's opinion.

[The Founders] constructed a government as they would have constructed an orrery [a mechanical model of the solar system],—to display the laws of nature. Politics in their thought was a variety of mechanics. The Constitution was founded on the law of gravitation. The government was to exist and move by virtue of the efficacy of “checks and balances.”

The trouble with the theory is that government is not a machine, but a living thing. It falls, not under the theory of the universe, but under the theory of organic life. It is accountable to Darwin, not to Newton. It is modified by its environment, necessitated by its tasks, shaped to its functions by the sheer pressure of life. No living thing can have its organs offset against each other as checks and live. . . . Living political constitutions must be Darwinian in structure and in practice. Society is a

living organism and must obey the laws of life, not of mechanics; it must develop.

All that progressives ask or desire is permission—in an era when “development,” “evolution,” is the scientific word—to interpret the Constitution according to the Darwinian principle; all they ask is recognition of the fact that a nation is a living thing and not a machine.<sup>7</sup>

Of course, insistence on a Darwinian interpretation of the Constitution means that those in power can interpret and apply the Constitution any way they choose: evolving meaning for evolving times. In contrast to the philosophy of Abraham Lincoln’s “right makes might,” legal evolutionists adhere to the philosophy of “might makes right”—that the possessors of power determine what is and what is not correct for the citizens of the country. And it is this philosophy that has held sway for the better part of a century. The Wilsonian/Darwinian model continues to dominate constitutional education, interpretation, and application, rallying judges, politicians, law professors, and law students under the banner: “The Constitution—A Living, Breathing Document.”

## O AMERICA!

Wilson's presidential acolytes include Franklin Roosevelt and his New Deal, Lyndon Johnson and his Great Society, and Barack Obama and his campaign to "fundamentally transform" America. President Obama, like Progressive presidents before him, has sided on increased constriction of liberty by gorging the government on the people's wealth. The attitude of "what's yours is mine" was alien to Americans and American presidents prior to the Progressive Era. Yet, this attitude today has resulted in ballooning deficits and debts into the tens of trillions of dollars and increased taxation and regulation. Lean years are ahead, not only for this generation of Americans but for generations to come. The requirements to kneel before a nameless and faceless bureaucracy, and foot the bill for its bulging budgets is a clear and present danger to individual liberty. The freedom to do with your wealth as you wish, the freedom to leave your property to your heirs without penalty, and the freedom to conduct business without cascading red tape are quaint ideas from a bygone era.

Liberty and bloated bureaucracy cannot dine at the same table. One produces, the other consumes. One creates, the other squanders. One made America the envy of the world, the other is making America just another country

in the world. And yet, President Obama continues to fatten the federal government, the bureaucracy by feeding it a diet rich in taxes, deficits, and debts. And he does this under the cover of the Constitution. By interpreting the Constitution according to Wilson's method, the hand of government continues to pick the people's pantry clean.

Of particular importance to President Obama is the legislative trifecta of the sweeping overhaul of healthcare, the passage of comprehensive immigration reform, and the mushrooming of exhaustive environmental regulations. Since his election in 2008, ballooning deficits and debts have overshadowed this agenda, but if Obama is successful in persuading the Congress to pass such legislation, the risks and rewards of freedom will surrender to the phantom "security" of the state. American exceptionalism will give way to statism, making us little different than a European-style Socialist nation which seeks to secure the well-being of every citizen, legal and illegal, from womb to tomb . . . for a price.

But statism—the principle upholding the supremacy of the state over the supremacy of God and His gift of liberty to mankind—is antithetical to our American republic, to the very Founders who created and handed

## O AMERICA!

down our American republic. The Founders envisioned liberty for themselves and their posterity. They risked their lives, their fortunes, and their honor to achieve that liberty. And they established the Constitution to protect that liberty. It is liberty that should be the great aim of our government, as Thomas Jefferson wrote: “[The policy of the American government] is to leave their citizens free, neither restraining nor aiding them in their pursuits.”<sup>8</sup>

Yet, Jefferson was not naïve. He knew that liberty tends to retreat while government tends to advance. “The natural progress of things is for liberty to yield and government to gain ground,” he observed.<sup>9</sup>

And so, it is true.

Our precipitous fall from freedom has been in the making for a century or more. The point has been long in coming, but it is now clear: we hold our liberty too cheaply. Too readily have we sold our liberty for the shackles of an ever-intrusive and inflated government. The question now is, *what, if anything, can we do to recover our former glory as the land of the free?*

Part of the answer lies in the remembrance that this is also the home of the brave. And bravery, as it was in our Founders’ day, is the necessary requirement.