

# Freedom Matters

We are a free people in a republic, under a constitution which limits the powers of government to those necessary to secure the unalienable rights of each person to their life, liberty and property. We dedicate this paper to saving and preserving our freedom.

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## To Be <sup>Free</sup> or Not to Be?

by Bob Bowman

That is the question, here in Wisconsin, if I may paraphrase Shakespeare's Hamlet. By deciding whether or not to enter a "comprehensive planning" era, we are, in truth, asking that question. To answer it is not easy.

Patrick Henry's famous answer to it, "Give me liberty or give me death," is too extreme for now. Besides, although there are many ways to achieve death, the end result is remarkably similar. The same cannot be said for achieving liberty, so at best, Henry's answer is an asymmetric equation. Besides, it doesn't take us anywhere that we might want to go.

Benjamin Franklin's famous answer to it is more genteel, as befits a nuanced Bostonian (even if he did soon remove to Philadelphia and points transatlantic). As Franklin put it, more or less, anyone who is willing to give up a little liberty for a little security, deserves neither liberty, nor security, and may get neither.

The first French constitution, after their famous revolution, laid down the headiest definition of freedom perhaps ever. It put no constraint on anyone save that of doing no harm to any other. Of course, defining harm is where the devil is, but at least it provided a kind of fuzzy ideal. As a pithy rule, to do no harm is the libertarian position, though we card-carrying Libertarians can use our libertarian right to disagree on it.

In the U. S. of A., we abandoned the ideal of being liberty loving Americans when we abandoned the road less traveled, to take the one more traveled. I refer to Friedrich Hayek's famous "Road to Serfdom." Critical seeds of this were sowed in 1913 with the ratification, within two months of each other, of the 16th constitutional amendment (allowing the income tax) and of the 17th (popular election of senators).

So, 1913 was a disaster year for our freedom, and its two constitutional amendments morally deserve to be repealed. The 16th makes us slaves. The 17th destroys our diversity of sovereign states. Those amendments both create a more tyrannical federal government.

Another seed, now grown into a toxic weed, was the adoption by the U. S. Supremes of the doctrine of the "living constitution." The term itself is a leftist trick (though others also use it) of naming a thing the opposite of what it is, to mislead. Such tricks are used in politics to demagogic effect, which is bad enough. However, to be used judicially is nothing short of a corruption, for dishonesty on the bench destroys the rule of law. That is, of course, exactly what has happened. By that doctrine, the U. S. Supreme Court in effect destroyed the rule of law. Their substitute for law is men. Yes, we are back under the rule of men.

Harry Jaffa, a noted constitutional scholar, quotes a seminal essay by Chief Justice William Rehnquist on "The Notion of a Living Constitution." However, the doctrine goes back to Justice Felix Frankfurter, of Franklin Roosevelt's Supreme Court, at least. It was used then to "amend" the constitution without facing the politically difficult process provided in the constitution itself. Thus the Court buckled under pressure, to accommodate Roosevelt's New Deal expansion of the powers of the federal government.

This is in a failure of the constitution, despite the brilliance of its design to have lasted as long as it did. Not that I have an easy solution for it. My issue is how to get back closer to the "original meaning" doctrine of the constitution. In particular, of course, is the failure of the Supreme Court to enforce parts of the Bill of Rights, particularly as it applies to property rights. I believe that the recovery of those freedoms will have to come from states rights, and there is a slow progress being made in that regard. The judicial history of the U. S. shows that the federal court can be pushed by a public who pushes it by states rights.

More on this rich literature in later issues.

Property rights web sites: < <http://www.fairnessinlaw.org/> >  
< <http://www.takebackwisconsin.com/> >  
<<http://www.PropertyRightsResearch.org>>

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