Unalienable &

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Rights

UNALIENABLE. The state of a thing or right which cannot be sold.

2. Things which are not in commerce, as public roads, are in their nature unalienable. Some things are unalienable, in consequence of particular provisions in the law forbidding their sale or transfer, as pensions granted by the government. The natural rights of life and liberty are UNALIENABLE. Bouviers Law Dictionary 1856 Edition

"Unalienable: incapable of being alienated, that is, sold and transferred." Black's Law Dictionary, Sixth Edition, page 1523:

You can not surrender, sell or transfer unalienable rights, they are a gift from the creator to the individual and can not under any circumstances be surrendered or taken. All individual's have unalienable rights.

Inalienable rights: Rights which are not capable of being surrendered or transferred without the consent of the one possessing such rights. Morrison v. State, Mo. App., 252 S.W.2d 97, 101.

You can surrender, sell or transfer inalienable rights if you consent either actually or constructively. Inalienable rights are not inherent in man and can be alienated by government. Persons have inalienable rights. Most state constitutions recognize only inalienable rights.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. DECLARATION OF INDEPENDENCE

Men are endowed by their Creator with certain unalienable rights,-'life, liberty, and the pursuit of happiness;' and to 'secure,' not grant or create, these rights, governments are instituted. That property which a man has honestly acquired he retains full control of, subject to these limitations: First, that he shall not use it to his neighbor's injury, and that does not mean that he must use it for his neighbor's benefit; second, that if the devotes it to a public use, he gives to the public a right to control that use; and third, that whenever the public needs require, the public

may take it upon payment of due compensation. BUDD v. PEOPLE OF STATE OF NEW YORK, 143 U.S. 517 (1892)

Among these unalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment. The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them, without let or hinderance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said that 'THE PROPERTY WHICH EVERY MAN HAS IN HIS OWN LABOR, AS IT IS THE ORIGINAL FOUNDATION OF ALL OTHER PROPERTY, SO IT IS THE MOST SACRED AND INVIOLABLE. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. . . The right to follow any of the common occupations of life is an inalienable right, it was formulated as such under the phrase 'pursuit of happiness' in the declaration of independence, which commenced with the fundamental proposition that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen. To deny it to all but a few favored individuals, by investing the latter with a monopoly, is to invade one of the fundamental privileges of the citizen, contrary not only to common right, but, as I think, to the express words of the constitution. It is what no legislature has a right to do; and no contract to that end can be binding on subsequent legislatures. . . BUTCHERS' UNION CO. v. CRESCENT CITY CO., 111 U.S. 746 (1884)

"Burlamaqui (Politic c. #, . 15) defines natural liberty as "the right which nature gives to all mankind of disposing of their persons and property after the manner they may judge most consonant to their happiness, on condition of their acting within the limits of the law of nature, and so as not to interfere with an equal exercise of the same rights by other men;" and therefore it has been justly said, that "absolute rights of individuals may be resolved into the right of personal security--the right of personal liberty--and the right to acquire and enjoy property. These rights have been justly considered and frequently declared by the people of this country to be natural, inherent, and unalienable." Potter's Dwarris, ch. 13, p. 429.

From these passages it is evident; that the right of acquiring and possessing property, and having it protected, is one of the natural, inherent, and unalienable rights of man. Men have a sense of property: Property is necessary to their subsistence, and correspondent to their natural wants and desires; its security was one of the objects, that induced them to unite in society. No man would become a member of a community, in which he could not enjoy the fruits of his honest labour and industry. . . The constitution expressly declares, that the right of acquiring, possessing, and protecting property is natural, inherent, and unalienable. It is a right not ex gratia from the

legislature, but ex debito from the constitution. . . Where is the security, where the inviolability of property, if the legislature, by a private act, affecting particular persons ONLY, can take land from one citizen, who acquired it legally, and vest it in another? VANHORNE'S LESSEE v. DORRANCE, 2 U.S. 304 (1795)

("[T]he Due Process Clause protects [the unalienable liberty recognized in the Declaration of Independence] rather than the particular rights or privileges conferred by specific laws or regulations." SANDIN v. CONNER, ___ U.S. ___ (1995)

In the second article of the Declaration of Rights, which was made part of the late Constitution of Pennsylvania, it is declared: 'That all men have a natural and unalienable right to worship Almighty God, according to the dictates of their own consciences and understanding; and that no man ought or of right can be compelled, to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent; nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship; and that no authority can, or ought to be, vested in, or assumed, by any power whatever, that shall, in any case, interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship.' (Dec. of Rights, Art. 2.). . . (The Judge then read the 1st. 8th. and 11th articles of the Declaration of Rights; and the 9th. and 46th sections of the Constitution of Pennsylvania. See 1 Vol. Dall. Edit. Penn. Laws p. 55. 6. 60. in the Appendix.) From these passages it is evident; that the right of acquiring and possessing property, and having it protected, is one of the natural, inherent, and unalienable rights of man. Men have a sense of property: Property is necessary to their subsistence, and correspondent to their natural wants and desires; its security was one of the objects, that induced them to unite in society. No man would become a member of a community, in which he could not enjoy the fruits of his honest labour and industry. The preservation of property then is a primary object of the social compact, and, by the late Constitution of Pennsylvania, was made a fundamental law. . . The constitution expressly declares, that the right of acquiring, possessing, and protecting property is natural, inherent, and unalienable. It is a right not ex gratia from the legislature, but ex debito from the constitution. VANHORNE'S LESSEE v. DORRANCE, 2 U.S. 304 (1795)

I had thought it self-evident that all men were endowed by their Creator with liberty as one of the cardinal unalienable rights. It is that basic freedom which the Due Process Clause protects, rather than the particular rights or privileges conferred by specific laws or regulations. . . It demeans the holding in Morrissey - more importantly it demeans the concept of liberty itself - to ascribe to that holding nothing more than a protection of an interest that the State has created through its own prison regulations. For if the inmate's protected liberty interests are no greater than the State chooses to allow, he is really little more than the slave described in the 19th century cases. I think it clear that even the inmate retains an unalienable interest in liberty - at the very minimum the right to be treated with dignity - which the Constitution may never ignore. MEACHUM v. FANO, 427 U.S. 215 (1976)

All commissions (regardless of their form, or by whom issued) contain, impliedly, the constitutional reservation, that the people at any time have the right, through their representatives, to alter, reform, or abolish the office, as they may alter, if they choose, the whole

form of government. In our magna Charta it is proclaimed (2d section of the Bill of Rights, under the 9th Article of the Constitution of Pennsylvania), that 'all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of these ends they have at all times an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.' It has been well said, by one of the ablest judges of the age, that 'a constitution is not to receive a technical construction, like a common law instrument or a statute. It is to be interpreted so as to carry out the great principles of the government, not to defeat them.' Per Gibson, C. J., in Commonwealth v. Clark, 7 Watts & S. (Pa.), 133. BUTLER v. COM. OF PENNSYLVANIA, 51 U.S. 402 (1850)

The rights of life and personal liberty are natural rights of man. 'To secure these rights,' says the Declaration of Independence, 'governments are instituted among men, deriving their just powers from the consent of the governed.' The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these 'unalienable rights with which they were endowed by their Creator.' Sovereignty, for this purpose, rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State, than it would be to punish for false imprisonment or murder itself. U S v. CRUIKSHANK, 92 U.S. 542 (1875)

". . . The question presented is not whether the United States has the power to condemn and appropriate this property of the Monongahela Company, for that is conceded, but how much it must pay as compensation therefor. Obviously, this question, as all others which run along the line of the extent of the protection the individual has under the Constitution against the demands of the government, is of importance; for in any society the fulness and sufficiency of the securities which surround the individual in the use and enjoyment of his property constitute one of the most certain tests of the character and value of the government. The first ten amendments to the Constitution, adopted as they were soon after the adoption of the Constitution, are in the nature of a bill of rights, and were adopted in order to quiet the apprehension of many, that without some such declaration of rights the government would assume, and might be held to possess, the power to trespass upon those rights of persons and property which by the Declaration of Independence were affirmed to be unalienable rights. UNITED STATES v. TWIN CITY POWER CO., 350 U.S. 222 (1956)

'By the common law, the king as parens patriae owned the soil under all the waters of all navigable rivers or arms of the sea where the tide regularly ebbs and flows, including the shore or bank to high- water mark. ... He held these rights, not for his own benefit, but for the benefit of his subjects at large, who were entitled to the free use of the sea, and all tide waters, for the purposes of navigation, fishing, etc., subject to such regulations and restrictions as the crown or the Parliament might prescribe. By Magna Charta, and many subsequent statutes, the powers of the king are limited, and he cannot now deprive his subjects of these rights by granting the public navigable waters to individuals. But there can be no doubt of the right of Parliament in England, or the Legislature of this state, to make such grants, when they do not interfere with the vested rights of particular individuals. The right to navigate the public waters of the state and to fish therein, and the right to use the public highways, are all public rights belonging to the people at large. They are not the private unalienable rights of each individual. Hence the Legislature as

the representatives of the public may restrict and regulate the exercise of those rights in such manner as may be deemed most beneficial to the public at large: Provided they do not interfere with vested rights which have been granted to individuals.' APPLEBY v. CITY OF NEW YORK, 271 U.S. 364 (1926)

I Elliot's Debates on the Federal Constitution (1876) 319 et seq. In ratifying the Constitution the following

declarations were made: New Hampshire, p. 326, 'XI. Congress shall make no laws touching religion, or to infringe the rights of conscience.' Virginia, p. 327, '... no right, of any denomination, can be cancelled, abridged, restrained, or modified, by the Congress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that among other essential rights, the liberty of conscience, and of the press, cannot be cancelled, abridged, restrained, or modified, by any authority of the United States.' New York, p. 328, 'That the freedom of the press ought not to be violated or restrained.' After the submission of the amendments, Rhode Island ratified and declared, pp. 334, 335, 'IV. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, and not by force and violence; and therefore all men have a natural, equal, and unalienable right to the exercise of religion according to the dictates of conscience; and that no particular religious sect or society ought to be favored or established, by law, in preference to others. ... XVI. That the people have a right to freedom of speech, and of writing and publishing their sentiments. That freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.' JONES v. CITY OF OPELIKA, 319 U.S. 105 (1943)

As to the objections made on the other side to our interpretation of the compact, that it impugns the right to the pursuit of happiness, which is inherent in every society of men, and is incompatible with these unalienable rights of sovereignty and of self-government, which every independent State must possess, the answer is obvious: that no people has a right to pursue its own happiness to the injury of others, for whose protection solemn compacts, like the present, have been made. It is a trite maxim, that man gives up a part of his natural liberty when he enters into civil society, as the price of the blessings of that state: and it may be said, with truth, this liberty is well exchanged for the advantages which flow from law and justice. GREEN v. BIDDLE, 21 U.S. 1 (1821)

This court said, in the case of The Bank of Columbia v. Okely (4 Wheat. 235), in speaking of a summary proceeding given by the charter of that bank for the collection of its debts: 'It is the remedy, and not the right, and as such we have no doubt of its being subject to the will of Congress. The forms of administering justice, and the duties and powers of courts as incident to the exercise of a branch of sovereign power, must ever be subject to legislative will, and the power over them is unalienable, so as to bind subsequent legislatures.' And in Young v. The Bank of Alexandria (4 Cranch, 397), Mr. Chief Justice Marshall says: 'There is a difference between those rights on which the validity of the transactions of the corporation depends, which must adhere to those transactions everywhere, and those peculiar remedies which may be bestowed on it. The first are of general obligation; the last, from their nature, can only be

exercised in those courts which the power making the grant can regulate.' See also The Commonwealth v. The Delaware & Hudson Canal Co. et al., 43 Pa. St. 227; State of Maryland v. Northern Central Railroad Co., 18 Md. 193; Colby v. Dennis, 36 Me. 1; Gowan v. Penobscot Railroad Co., 44 id. 140. U.S. v. UNION PAC. R. CO., 98 U.S. 569 (1878)

It is significant that the guarantee of freedom of speech and press falls between the religious guarantees and the guarantee of the right to petition for redress of grievances in the text of the First Amendment, the principles of which are carried to the States by the Fourteenth Amendment. It partakes of the nature of both, for it is as much a guarantee to individuals of their personal right to make their thoughts public and put them before the community, see Holt, Of the Liberty of the Press, in Nelson, Freedom of the Press from Hamilton to the Warren Court 18-19, as it is a social necessity required for the "maintenance of our political system and an open society." Time, Inc. v. Hill, supra, at 389. It is because of the personal nature

of this right that we have rejected all manner of prior restraint on publication, Near v. Minnesota, 283 U.S. 697, despite strong arguments that if the material was unprotected the time of suppression was immaterial. Pound, Equitable Relief Against Defamation and Injuries to Personality, 29 Harv. L. Rev. 640. The dissemination of the individual's opinions on matters of public interest is for us, in the historic words of the Declaration of Independence, an "unalienable right" that "governments are instituted among men to secure." History shows us that the Founders were not always convinced that unlimited discussion of public issues would be "for the benefit of all of us"13 but that they firmly adhered to the proposition that the "true liberty of the press" permitted "every man to publish his opinion." Respublica v. Oswald, 1 Dall. 319, 325 (Pa.). CURTIS PUBLISHING CO. v. BUTTS, 388 U.S. 130 (1967)

While the "meaning and scope of the First Amendment" must be read "in light of its history and the evils it was designed forever to suppress," Everson v. Board of Education, supra, at 14-15, this Court has also recognized that "this Nation's history has not been one of entirely sanitized separation between Church and State." Committee for Public Education & Religious Liberty v. Nyquist, supra, at 760. "The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself." Abington School District v. Schempp, 374 U.S. 203, 213 (1963).5 The Court properly has noted "an unbroken history of official acknowledgment . . . of the role of religion in American life." Lynch v. Donnelly, 465 U.S., at 674, and has recognized that these references to "our religious heritage" are constitutionally acceptable. Id., at 677. EDWARDS v. AGUILLARD, 482 U.S. 578 (1987)

When the First Congress was debating the Bill of Rights, it was contended that there was no need separately to assert the right of assembly because it was subsumed in freedom of speech. Mr. Sedgwick of Massachusetts argued that inclusion of "assembly" among the enumerated rights would tend to make the Congress "appear trifling in the eyes of their constituents. . . ." If people freely converse together, they must assemble for that purpose; it is a self-evident, unalienable right which the people possess; it is certainly a thing that never would be called in question . . . ." 1 Annals of Cong. 731 (1789). Since the right existed independent of any written guarantee, Sedgwick went on to argue that if it were the drafting committee's purpose to protect all inherent rights of the people by listing them, "they might have gone into a very lengthy enumeration of

rights," but this was unnecessary, he said, "in a Government where none of them were intended to be infringed." Id., at 732. Mr. Page of Virginia responded, however, that at times "such rights have been opposed," and that "people have . . . been prevented from assembling together on their lawful occasions": "[T]herefore it is well to guard against such stretches of authority, by inserting the privilege in the declaration of rights. If the people could be deprived of the power of assembling under any pretext whatsoever, they might be deprived of every other privilege contained in the clause." Ibid. The motion to strike "assembly" was defeated. Id., at 733. RICHMOND NEWSPAPERS, INC. v. VIRGINIA, 448 U.S. 555 (1980)

"Gentlemen, I have insisted, at great length, upon the origin of governments, and detailed the authorities which you have heard upon the subject, because I consider it to be not only an essential support, but the very foundation of the liberty of the press. If Mr. Burke be right in his principles of government, I admit that the press, in my sense of its freedom, ought not to be free, nor free in any sense at all; and that all addresses to the people upon the subjects of government, and all speculations of amendment, of what kind or nature so ever, are illegal and criminal; since if the people have, without possible re-call, delegated all their authorities, they have no jurisdiction to act, and therefore none to think or write upon such subjects; and it would be a libel to arraign government or any of its acts, before those who have no jurisdiction to correct them. But on the other hand . . . no legal argument can shake the freedom of the press in my sense of it, if I am supported in my doctrines concerning the great unalienable right of the people, to reform or to change their governments. It is because the liberty of the press resolves itself into this great issue, that it has been in every country the last liberty which subjects have been able to wrest from power. Other liberties are held under governments, but the liberty of opinion keeps governments themselves in due subjection to their duties." 1 Speeches of Lord Erskine 524-525 (J. High ed. 1876). HERBERT v. LANDO, 441 U.S. 153 (1979)

The denial of human rights was etched into the American Colonies' first attempts at establishing self-government. When the colonists determined to seek their independence from England, they drafted a unique document cataloguing their grievances against the King and proclaiming as "self-evident" that "all men are created equal" and are endowed "with certain unalienable Rights," including those to "Life, Liberty and the pursuit of Happiness." The self-evident truths and the unalienable rights were intended, however, to apply only to white men. An earlier draft of the Declaration of Independence, submitted by Thomas Jefferson to the Continental Congress, UNIVERSITY OF CALIFORNIA REGENTS v. BAKKE, 438 U.S. 265 (1978)

The Declaration of Independence states the American creed: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." This ideal was not fully achieved with the adoption of our Constitution because of the hard and tragic reality of Negro slavery. The Constitution of the new Nation, while heralding liberty, in effect declared all men to be free and equal - except black men who were to be neither free nor equal. This inconsistency reflected a fundamental departure from the American creed, a departure which it took a tragic civil war to set right. With the adoption, however, of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, freedom and equality were guaranteed expressly to all regardless "of race, color, or previous condition of servitude."1 United States v. Reese, 92 U.S. 214, 218. BELL v. MARYLAND, 378 U.S. 226 (1964)