

In Search of The Supreme Flaw of the Land: Unalienable Rights

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In Search of the Supreme Flaw of the Land: Unalienable Rights

The Clear and Simple Test

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.

—from *The Declaration of Independence*
Adopted in Congress July 4, 1776

U.S. citizens have been taught that they have unalienable rights. Among them, presumably, are life, liberty, and the pursuit of happiness. But are they really unalienable? What does it mean for something to be unalienable?

UNALIENABLE. Incapable of being sold.

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. —*Bouvier's Law Dictionary*, 1889

Unalienable... Inalienable; incapable of being aliened, that is, sold and transferred.

Inalienable rights. Rights which can never be abridged because they are so fundamental. —*Black's Law Dictionary*, 1979

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. —*Black's Law Dictionary*, 1979

Clearly, if a right can be forcibly removed then it isn't an unalienable right. A clear and simple test therefore exists.

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In Search of the Supreme Flaw of the Land: Unalienable Rights

Using the Test

The Right to Life

On April 5, 1984, Elmo Patrick Sonnier, age 35, died by electrocution in Angola, Louisiana. On the same day, Arthur F. Goode III, age 30, was electrocuted in Starke, Florida. Neither death was accidental nor was either death voluntary. Both men were killed against their will by the government. I don't propose here to debate capital punishment but to document that it exists. The purely academic question of whether their right to life continues after death, and they are merely being prevented from exercising it, isn't of any value in this lifetime to Elmo Patrick Sonnier and Arthur F. Goode III. In practical terms, their right to life was taken from them without their consent and is therefore not an **unalienable** right.

The Right to Liberty

Liberty is an extremely broad concept. However, each aspect of it has been limited or removed by government. A single example will suffice for this discussion.

Liberty. ...freedom from servitude, imprisonment or restraint....

—*Black's Law Dictionary*, 1979

Many provisions of legislation provide for servitude, imprisonment, or restraint. Indeed, as of January 1, 1984, the felon prison population in California was almost 40,000. As of December 31, 1985, there were approximately 500,000 prisoners under the combined jurisdictions of state and federal correctional authorities. Although prison population statistics are reported in various ways, the numbers clearly show that there are many people who have been deprived of this aspect of their liberty. I'm confident that they didn't surrender it voluntarily. That the right may still exist, and that they are only being prevented from exercising it, is a specious argument that will not provide any comfort to those prisoners. I don't contend that the prisoners are there unjustly but only that a portion of their liberty has been taken from them without their consent. Clearly, if liberty can be removed without the consent of the person from whom it is taken, then it isn't an **unalienable** right.

The Right to the Pursuit of Happiness

Of the three rights under consideration, the pursuit of happiness is the least susceptible to control. It encompasses a broad range of meaning and emotion and its exercise can be difficult to prevent. Some people can pursue happiness in the most bleak of situations. This right may be more nearly unalienable than any other. However, in its constitutional sense, it is subject to limitations.

Pursuit of happiness. As used in constitutional law, this right includes personal freedom, freedom of contract, exemption from oppression or invidious discrimina-

In Search of the Supreme Flaw of the Land: Unalienable Rights

tion, the right to follow one's individual preference in the choice of an occupation and the application of his energies, liberty of conscience, and the right to enjoy the domestic relations and the privileges of the family and the home.... The right to follow or pursue any occupation or profession without restriction and without having any burden imposed upon one that is not imposed upon others in a similar situation....
—*Black's Law Dictionary*, 1979

Irrepressible man may pursue happiness, come what may, yet in its constitutional sense each aspect of this pursuit is in some way restricted by government:

... *personal freedom*.... Restrictions on personal freedom include curfews, speed limits, age requirements, dress codes, no-cruising zones, access restrictions, tax reporting requirements, identity requirements, and others.

... *freedom of contract*.... Restrictions on freedom of contract include preconditions on contractor's licenses, mandatory insurance, prohibitions in the choice of a garbage collection company by private parties, prerequisites on the use of public roads for gain or profit, and others.

... *exemption from oppression or invidious discrimination*.... Oppression includes the use of force or the threat of force by government to obtain compliance with requirements that would not otherwise be obeyed, such as the threat of imprisonment or the confiscation of inventory to force compliance with business license, zoning, or code requirements. Invidious discrimination exists whenever the government grants a privilege to one person and withholds it from another.

... *the right to follow one's individual preference in the choice of an occupation and the application of his energies*.... and... *the right to follow or pursue any occupation or profession without restriction and without having any burden imposed upon one that is not imposed upon others in a similar situation*.... Many jobs are not freely available but, instead, require prior acceptance by a ruling clique or payment of a fee for the privilege of the job. Examples are jobs requiring licenses, jobs requiring bonding, jobs requiring membership in a union or association, and jobs requiring application and examination.

... *liberty of conscience*.... People who conscientiously object to medical practices are often forced to submit their children to those practices. Members of religions which incorporate polygamous marriages are prosecuted for following their religious beliefs. People with strong beliefs regarding prayer in schools, euthanasia, unlicensed medicine or medical practitioners, pornography, etc., are often prevented from making their own decisions with regard to participation in those areas.

... *the right to enjoy the domestic relations and the privileges of the family and the home*.... Grants of marriage license are required before many privileges of the family are permitted, including the availability of insurance, tax benefits, and credit.

It isn't my purpose here to debate the restrictions on the pursuit of happiness but to show that many such restrictions exist. I'll concede that the U.S. government hasn't, so far, shown itself able to fully prevent, but only to complicate, the pursuit of happiness. Whether or not this right is unalienable is therefore unproven. If it is unalien-

In Search of the Supreme Flaw of the Land: Unalienable Rights

able, then it may hold the hope for the restoration of other, less durable rights. In either case, government has the power to impose great restrictions upon the pursuit of happiness.

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In Search of the Supreme Flaw of the Land: Unalienable Rights Good Grief, Good Government, and Other Oxymora

Meaning can be influenced by description and to that end language is a never-ending resource.¹ Metaphors can suggest meanings beyond the words themselves. Analogies can describe the indescribable. Anthropomorphisms can inspire life into the inanimate. Among the forms of literary license, the oxymoron is less well known but has been long accepted.

oxymoron... a combination of contradictory or incongruous words (as *cruel kindness*)...
—*Webster's Ninth New Collegiate Dictionary*, 1987

Oxymora are sometimes benign. For example, nobody will be surprised at the actual size of a *jumbo shrimp*. We may, with greater qualms, contemplate *military intelligence* while *government benefit* has long been recognized as a contradiction in terms. However, the concept of *unalienable rights* is more than somewhat dangerous. The idea that rights are unalienable, that the government can't take them away, is political anesthesia. This mistaken belief has fostered such an incautious attitude toward rights as to result in their disappearance. With the **possible** exception of the pursuit of happiness, rights are not unalienable. The term *unalienable rights* is an oxymoron.

Rights must be real in practice, not just in theory, or they don't exist. When they do exist, it isn't because of the authority of the various constitutions, or the generosity of the courts, or the vigilance of the police. It isn't even due to the pronouncements of the founding fathers. When rights exist, it's only because they're uncompromisingly exercised by those people who claim them. Without such unflinching attention, rights will inevitably perish.

It is the common fate of the indolent to see their rights become a prey to the active. The condition upon which God hath given liberty to man is eternal vigilance; which condition if he break, servitude is at once the consequence of his crime and the punishment of his guilt.
—John Philpot Curran, 1790

¹ See, for example, my Ravings essays.

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In Search of the Supreme Flaw of the Land: Unalienable Rights

Glossary

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.

—*Black's Law Dictionary*, 1979

LIBERTY.... *Natural liberty* is the right which nature gives to all mankind of disposing of their persons and property after the manner they judge most consistent with 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. Burlam. c. 3. §15; 1 Bla. Com. 125. It is called by Lieber *social liberty*, and is defined as the protection or unrestrained action in as high a degree as the same claim of protection of each individual admits of.

Personal liberty consists in the power of locomotion, of changing situation, of removing one's person to whatever place one's inclination may direct, without imprisonment or restraint unless by due course of law. 1 Bla. Com. 134.

Political liberty is an effectual share in the making and administration of the laws. Lieber, Civ. Lib.

Liberty, in its widest sense, means the faculty of willing, and the power of doing what has been willed without influence from without. It means self-determination, unrestrainedness of action. Thus, defined, one being only can be absolutely free, - namely, God. So soon as we apply the word liberty to spheres of human action the term receives a relative meaning, because the power of man is limited; he is subject to constant influences from without. If the idea of unrestrainedness of action is applied to the social state of man, it receives a limitation still greater, since the equal claims of unrestrained action of all necessarily involves the idea of protection against interference by others. We thus

come to the definition, that liberty of social man consists in the protection of unrestrained action in as high a degree as the same claim of protection of each individual admits of, or in the most efficient protection of his rights, claims, interests, as man or citizen, or of his humanity, manifested as a social being. (See RIGHT.) The word liberty, applied to men in their political state, may be viewed with reference to the state as a whole, and in this case means the independence of the state, of other states (see AUTONOMY); or it may have reference to the relation of the citizen to the government, in which case it is called political or civil liberty; or it may have reference to the status of a man as a political being, contradistinguished from him who is not considered master over his own body, will, or labor - the slave. This is called personal liberty, which, as a matter of course, includes freedom from prison....

—*Bouvier's Law Dictionary*, 1889

LIFE. “The sum of the forces by which death is resisted.” Bichat.

A state in which energy of function is ever resisting decay and dissolution.

It commences, for many legal purposes, at the period of quickening, when the first motion of the foetus in utero is perceived by the mother. 1 Bla. Com. 129: Co. 3d Inst. 50. It ceases at death. See DEATH.

But physiology pronounces life as existing from the period of conception, because foetuses in utero do die prior to quickening, and then all the signs of death are found to be perfect: Dean, Med. Jur. 129, 130.

For many important purposes, however, the law concedes to physiology the fact that life commences at conception, *in ventre sa mère*. See FETUS. Thus, it may receive a legacy, have a guardian assigned to it, and an estate limited to its use: 1 Bla. Com.

In Search of the Supreme Flaw of the Land: Unalienable Rights

130. It is thus considered as alive for all beneficial purposes: 1 P. Wms. 329.

But for the transfer of civil rights the child must be born alive. The ascertainment of this, as a fact, depends upon certain signs which are always attendant upon life: the most important of these is crying. As to conditions of live birth, see BIRTH: INFANTICIDE.

Life is presumed to continue for one hundred years; 9 Mart. La. 257. As to the presumption of survivorship in case of the death of two persons, at or about the same time, see DEATH: 14 Cent. L. J. 367, a full article reprinted from the Irish L. Times.

—*Bouvier's Law Dictionary*, 1889

Pursuit of happiness. As used in constitutional law, this right includes personal freedom, freedom of contract, exemption from oppression or invidious discrimination, the right to follow one's individual preference in the choice of an occupation and the application of his energies, liberty of conscience, and the right to enjoy the domestic relations and the privileges of the family and the home. *Butchers' Union, etc., Co. v.*

Crescent City Live Stock, etc., Co., 4 S.Ct. 652, 111 U.S. 746, 28 L.Ed. 585. The right to follow or pursue any occupation or profession without restriction and without having any burden imposed upon one that is not imposed upon others in a similar situation. *Myers v. City of Defiance*, 67 Ohio App. 159, 36 N.E.2d 162, 21 O.L.A. 165.

—*Black's Law Dictionary*, 1979

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