

Source-Paper on Inalienability Theory

This paper is only a collection of likenesses and representative quotations from thinkers about inalienability and inalienable rights starting from Antiquity down to the present. The point is that one can get a decent grasp of the theory of inalienability just by reading the quotations and seeing the common golden thread. Sufficient bibliographical references are given so that students can use the quotes with proper references.

People and quotations about inalienability and inalienable rights



The insight into the inalienability of inner freedom or autonomy dates back at least to the Stoics such as Seneca (ca. 4 BC – 65 AD).

"It is a mistake to think that slavery penetrates the entire man. The better part of him is exempt. Bodies can be assigned to masters and be at their mercy. But the mind, at any rate, is its own master, The body, therefore, is what fortune hands over to a master, what he buys and sells. That inner part can never come into anyone's possession. Whatever proceeds from it is free." [Seneca, *De beneficiis*, III, 257]

It is a mistake to imagine that slavery pervades a man's whole being; the better part of him is exempt from it: the body indeed is subjected and in the power of a master, but the mind is independent, and indeed is so free and wild, that it cannot be restrained even by this prison of the body, wherein it is confined. [Seneca, *De beneficiis*, III, 20; quoted in Cassirer, Ernst. 1963. *The Myth of the State*. New Haven: Yale University Press., 103]



The principal insight behind the theory of inalienable rights is that the factual responsibility for one's human actions and decisions cannot (not "shouldn't" but can't) be voluntarily alienated or transferred to other persons. This inner freedom and autonomy is foreshadowed in Seneca and in Augustine, but it emerged fully in Western thought in the work of Martin Luther (1483 – 1546). It is often expressed as the inalienability of conscience or the inalienability of decision-making about matters of faith to a religious authority.

"Furthermore, every man is responsible for his own faith, and he must see it for himself that he believes rightly. As little as another can go to hell or heaven for me, so little can he believe or disbelieve for me; and as little as he can open or shut heaven or hell for me, so little can he drive me to faith or unbelief. Since, then, belief or unbelief is a matter of every one's conscience, and since this is no lessening of the secular power, the latter should be content and attend to its own affairs and permit men to believe one thing or another, as they are able and willing, and constrain no one by force. For faith is a free work, to which no one can be forced. Nay, it is a divine work, done in the Spirit, certainly not a matter which outward authority should compel or create. Hence arises the well-known saying, found also in Augustine, 'No one can or ought be constrained to believe.' Besides, the blind, wretched folk do not see how utterly hopeless and impossible a thing they are attempting. For no matter how much they fret and fume, they cannot do more than make people obey them by word or deed; the heart they cannot constrain, though they wear themselves out trying. For the proverb is true, 'Thoughts are free.' Why then would they constrain people to believe from the heart, when they see that it is impossible?" [Luther, Martin, *On Secular Authority*.1523]



Perhaps the first philosopher to clearly extract the doctrine of inalienability from the Reformation's doctrine of liberty of conscience was the atheistic Jew, Baruch de Spinoza (1632 – 1677).

"However, we have shown already (Chapter XVII) that no man's mind can possibly lie wholly at the disposition of another, for no one can willingly transfer his natural right of free reason and judgment, or be compelled so to do. For this reason government which attempts to control minds is accounted tyrannical, and it is considered an abuse of sovereignty and a usurpation of the rights of subjects, to seek to prescribe what shall be accepted as true, or rejected as false, or what opinions should actuate men in their worship of God. All these questions fall within a man's natural right, which he cannot abdicate even with consent.

I admit that the judgment can be biased in many ways, and to an almost incredible degree, so that while exempt from direct external control it may be so dependent on another man's words, that it may fitly be said to be ruled by him; but although this influence is carried to great lengths, it has never gone so far as to invalidate the statement, that each man's understanding is his own, and that brains are as diverse as palates." [Spinoza, *Theologico-Political Treatise*, 1670, Chapter XX]

Libertarians please note the expression: "which he cannot abdicate even with consent."

Also note that Spinoza makes the point that this inalienability is still true even though a person may be slavishly dependent on the opinion of another.

Spinoza goes on to again refer to this freedom of decision-making as an "indefeasible natural right":

"However unlimited, therefore, the power of a sovereign may be, however implicitly it is trusted as the exponent of law and religion, it can never prevent men from forming judgments according to their intellect, or being influenced by any given emotion. ...

Since, therefore, no one can abdicate his freedom of judgment and feeling; since every man is by

indefeasible natural right the master of his own thoughts, it follows that men thinking in diverse and contradictory fashions, cannot, without disastrous results, be compelled to speak only according to the dictates of the supreme power." [Spinoza, *Theologico-Political Treatise*, 1670, Chapter XX]



It was Francis Hutcheson (1694 – 1746) in the Scottish Enlightenment (Adam Smith's teacher and predecessor in the Chair in Moral Philosophy in Glasgow) who arrived, independently or not, at the same idea of developing the Reformation doctrine of the inalienability of conscience into a theory of inalienable rights. But it was certainly from Hutcheson that the idea of inalienable rights later entered the political lexicon through the American Declaration of Independence. Although intimated in earlier works, the inalienability argument is best developed in Hutcheson's influential *A System of Moral Philosophy*:

"Our rights are either alienable, or unalienable. The former are known by these two characters jointly, that the translation of them to others can be made effectually, and that some interest of society, or individuals consistently with it, may frequently require such translations. Thus our right to our goods and labours is naturally alienable. But where either the translation cannot be made with any effect, or where no good in human life requires it, the right is unalienable, and cannot be justly claimed by any other but the person originally possessing it." [Hutcheson, *A System of Moral Philosophy*, 1755, Book II, Chapter 3, section IV]

Hutcheson appeals to the inalienability argument in addition to utility. He contrasts de facto alienable goods where "the translation of them to others can be made effectually" (like the aforementioned shovel) with factually inalienable faculties where "the translation cannot be made with any effect." This was not just some outpouring of moral emotions that one should not alienate this or that basic right. Hutcheson actually set forth a theory which could have legs of its own far beyond Hutcheson's (not to mention Luther's) intent. He based the theory on what in fact could or could not be transferred or alienated from one person to another.

Hutcheson goes on to show how the "right of private judgment" or liberty of conscience is inalienable.

"Thus no man can really change his sentiments, judgments, and inward affections, at the pleasure of another; nor can it tend to any good to make him profess what is contrary to his heart. The right of private judgment is therefore unalienable." [Ibid.]

Hutcheson pinpoints the factual nontransferability of private decision-making power. In the case of the criminous employee, we see how the employee ultimately makes the decisions himself (through ratification and voluntary obedience) in spite of what is commanded by the employer. Short of coercion, he echoes Spinoza's point that an individual's faculty of judgment cannot in fact be short circuited by a secular or religious authority.

"A like natural right every intelligent being has about his own opinions, speculative or practical, to judge according to the evidence that appears to him. This right appears from the very constitution of the rational mind which can assent or dissent solely according to the evidence presented, and naturally desires knowledge. The same considerations shew this right to be unalienable: it cannot be subjected to the will of another: tho' where there is a previous judgment formed concerning the superior wisdom of another, or his infallibility, the opinion of this other, to a weak mind, may become sufficient evidence." [Ibid.]

Spinoza was not only known but notorious to pious philosophers of Hutcheson's time and Hutcheson could read and write in Latin as did Spinoza. We have seen how Hutcheson seems to clearly develop Spinoza's points. Yet Spinoza never is mentioned in any of Hutcheson's work. One might surmise that the pious Scottish Presbyterian did not want his theory to be seen as the development of the work of the atheistic Jew.

A system of the principles
of the law of Scotland. By
George Wallace, Advocate.
Vol. I. Volume 1 of 1

George Wallace



George Wallace (or Wallis), (1727-1805), son of Rev. Robert Wallace (1696-1771), is best-known for a passage from his "System of the Principles of the law of Scotland" (1760) that was reprinted by the Quaker anti-slavery pamphleteer Anthony Benezet. But the history of this passage is itself of interest. It was translated into French and published without any reference to Wallace in Diderot's Encyclopedia. The historian of anti-slavery thought, David Brion Davis, first described it as "one of the earliest and most lucid applications to slavery of the natural rights philosophy, [which] succeeds in stating a basic principle which was to guide the more radical abolitionists of the nineteenth century." But when Davis later discovered that it had just be copied from Wallace, then he noted that: "It is clearly a mistake to attribute this radical antislavery position to the rationalism or secular humanitarianism of the French Enlightenment." Instead, Wallace's contribution was part of the Scottish Enlightenment.

Wallace asserted that: "Men and their liberty are not in commercio; they are not either saleable or purchaseable." He then continues:

"For these reasons, every one of those unfortunate men, who are pretended to be slaves, has a right to be declared free, for he never lost his liberty; he could not lose it; his prince had no power to dispose of him. Of course, the sale was ipso jure void. This right he carries about with him, and is entitled every where to get it declared. As soon, therefore, as he comes into a country, in which the judges are not forgetful of their own humanity, it is their duty to remember that he is a man, and to declare him to be free." [Wallace 1760, 95-96]

Wallace's statement illustrates the interplay between de facto and de jure elements, an interplay that

is central to understanding the de facto inalienability argument. When he declares that the slave has "never lost his liberty; he could not lose it," that refers to the slave's de facto retention of his free will and decision-making capacity (as recognized, for example, in the example of the criminous slave). Yet the law can declare a slave purchase contract as valid, and take a slave's obedience as fulfilling the contract to be a chattel. Since the slaves remain a de facto human agents in the de jure role of a thing, they are only "pretended to be slaves" by the legal authorities (at least until the slaves commit crimes).



The most quoted phrase in the American Declaration of Independence was written by Thomas Jefferson's (April 13, 1743 – July 4, 1826) and it is the source of the phrase "inalienable rights" in American political rhetoric.

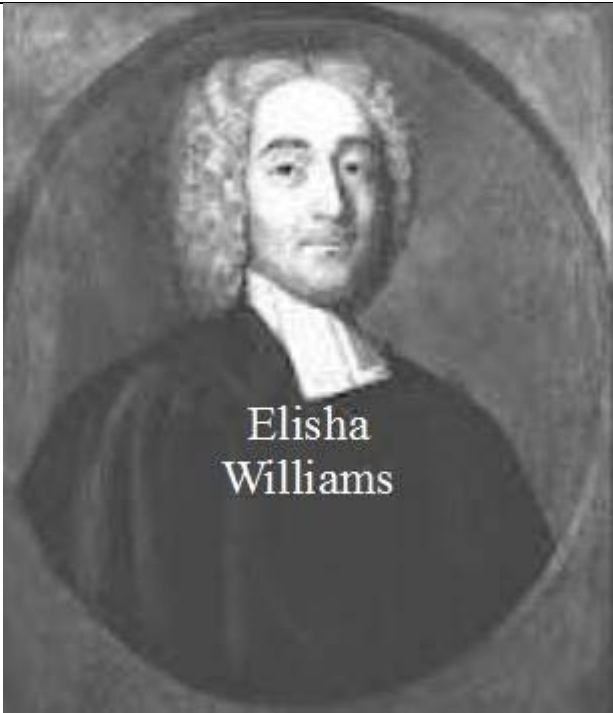
"We hold these truths to be self-evident, That all men are created equal, that they are endowed by their creator with certain unalienable rights; that among these are life, liberty & the pursuit of happiness"

The conventional scholarly view has been that "Jefferson copied Locke" [Becker, Carl 1958. *The Declaration of Independence*. New York: Vintage Books, 79] which could hardly be more incorrect. Locke had no serious theory of inalienability, and he in fact condoned a limited voluntary contract for slavery which he nicely called "Drudgery."

In Garry Wills' important study, *Inventing America*, he reinvented Jeffersonian scholarship concerning the intellectual roots of the Declaration of Independence. Wills convincingly argued that the Lockean influence was more indirect and even to some extent resisted by Jefferson, while Hutcheson's influence was central and pervasive. Of direct interest here, "Jefferson took his division of rights into alienable and unalienable from Hutcheson, who made the distinction popular and important" [Wills, Garry 1979. *Inventing America*. New York: Vintage Books, 213].

As a linguistic sidelight, the final draft of the Declaration of Independence used the word "unalienable" while Jefferson's draft used "inalienable" which has become the modern usage.

"Normal English usage of Jefferson's time—e.g., in the work of Francis Hutcheson—was 'unalienable' rights. This is what either Congress or the broadside's printer substituted for Jefferson's 'inalienable.' Jefferson may have had French usage (e.g., by Burlamaqui) in mind, or the Latin root." [Wills 1979, 370-371]



Elisha Williams (August 26, 1694 – July 24, 1755)

Williams was a "New Light" minister in the Great Awakening in America during the mid 1700's. The following passage is a very clear enunciation of the "inalienability of conscience" ("conscience" in the sense of one's religious beliefs) which was an inheritance from the Reformation that was generalized in the theory of inalienable rights.

"No action is a religious action without understanding and choice in the agent. Whence it follows, the rights of conscience are sacred and equal in all, and strictly speaking unalienable. This right of judging every one for himself in matters of religion result from the nature of man, and is so inseparably connected therewith, that a man can no more part with it than he can with his power of thinking; and it is equally reasonable for him to attempt to strip himself of the power of reasoning, as to attempt the vesting of another with this right. And whoever invades this right of another, be he pope or Caesar, may with equal reason assume the other's power of thinking, and so level him with the brutal creation. A man may alienate some branches of his property and give up his right in them to others; but he cannot transfer the right of conscience, unless he could destroy his rational and moral powers,... ." [Williams, Elisha. 1998. "The Essential Rights and Liberties of Protestants." In *Political Sermons of the American Founding Era, 1730-1805 Vol. I*, edited by E. Sandoz, 55–118. Indianapolis: Liberty Fund, p. 62]

According to the Wikipedia entry on him, there is some controversy about whether Williams was the author of the tract, but our point here is the content.

h/t to George H. Smith for finding the Williams quote.

THE LIBERAL PREACHER.

VOL. II.]

NOVEMBER, 1828.

[No. 5.]

SERMON VI.

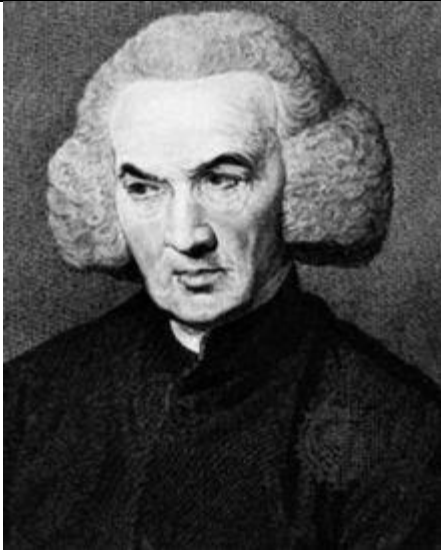
BY REV. JOHN BRAZER, SALEM, MASS.

CHRISTIAN UNITY.

Rev. John Brazer (1789-1846), like Elisha Williams, was another "Liberal Preacher" who gave a quite explicit expression to the inalienability of conscience (in the sense of one's religious beliefs). It was this Reformation doctrine that was carried over from the religious plane to the political arena (e.g., by Hutcheson) in the doctrine of inalienable rights.

"Our apprehensions of truth, our belief of any article of faith, our assent to testimony, our views of any proposition, are necessarily personal acts. They must depend upon the evidence presented to our own minds, they must be the conclusions of our own thoughts. And as no man can think for another, or perceive for another, so no man can believe for another, or, what is the same thing in fact, make his belief the standard of another man's belief. The mind has its laws of operation, independently of an arbitrary prescription, as well as the external senses; and there is, as I apprehend, as much propriety in establishing prescribed forms for seeing, hearing and feeling, as for believing. We may, indeed, and we ought to avail ourselves of the assistance of the wise and good; we should keep our minds open to the fair effect of evidence and to the just influence of persuasion; but of the nature of this assistance, of the strength of this proof, and of the power of this persuasion, we are the only adequate, and the only rightful judges, and must decide for ourselves. These are the inalienable rights of conscience, of which no man [p. 64] can divest himself, without committing an outrage upon the nature which God has given him; these are rights with which no man or set of men can interfere, whether to secure an unity of belief, or for any other purpose, without incurring deep guilt." [Brazer, Rev. John. 1828. "Sermon VI: Christian Unity." *The Liberal Preacher* II (5 November): 59-76, pp. 63-64]

"Every one is held responsible for his own faith, as well as for his own practice, and no man for the faith any more than for the practice of another." [Ibid. p. 64]



Richard Price (1723 – 1791), a dissenting Presbyterian minister from Wales, was a well-rounded thinker with contributions in moral philosophy, political theory, economics, and mathematics in addition to more religious endeavors. With the outbreak of the American Revolution, Price courageously published a work, *Observations on the Nature of Civil Liberty*, which sided with the Americans' claim:

"that Great Britain is attempting to rob them of that liberty to which every member of society and all civil communities have a natural and unalienable title." [Price, 1776, Part I]

This and later works by Price earned him the respect and admiration of the American revolutionaries. Tom Paine in *The Rights of Man* launched his famous attack on Burke's *Reflections on the Revolution in France* by noting that "a great part of [Burke's] work is taken up with abusing Dr. Price (one of the best-hearted men that lives)..."

Price build his political theory on

"that principle of spontaneity or self-determination which constitutes us agents or which gives us a command over our actions, rendering them properly ours, and not effects of the operation of any foreign cause." [Price, *Observations on the Nature of Civil Liberty*, 1776, Part I, sec. I]

Any contract pretending to transfer the right of a people's self-determination to another state would be non-binding.

"Neither can any state acquire such an authority over other states in virtue of any compacts or cessions. This is a case in which compacts are not binding. Civil liberty is, in this respect, on the same footing with religious liberty. As no people can lawfully surrender their religious liberty by giving up their right of judging for themselves in religion, or by allowing any human beings to prescribe to them what faith they shall embrace, or what mode of worship they shall practise, so neither can any civil

societies lawfully surrender their civil liberty by giving up to any extraneous jurisdiction their power of legislating for themselves and disposing their property." [Ibid.]

Price's tract naturally raised a furor of opposition so in 1777, he wrote *Additional Observations on the Nature and Value of Civil Liberty* to clarify his positions and answer his critics. Again the different types of liberty were squarely grounded on:

"the general idea of self-government. The liberty of men as agents is that power of self-determination which all agents, as such, possess. Their liberty as moral agents is their power of self-government in their moral conduct. Their liberty as religious agents is their power of self-government in religion. And their liberty as members of communities associated for the purposes of civil government is their power of self-government in all their civil concerns." [Price 1777, Part I, sec. I]



Immanuel Kant (1724 – 1804) acknowledged that "every man has inalienable rights which he cannot give up even if he would..." [Kant, *On the Old Saw: That May be Right in Theory But It Won't Work in Practice*, 1793].

"Nor can a man living in the legal framework of a community be stripped of this quality by anything save his own crime. He can never lose it, neither by contract nor by acts of war (*occupatio bellica*), for no legal act, neither his own nor another's, can terminate his proprietary rights in himself." [Ibid.]

But why? The explanation might be based on Kant's notion of proprietary right derived from intentional possession by one's will.

"[O]wning is a matter of a human will taking possession; it therefore already excludes slavery as a possible form of property: persons cannot be owned... "

"[W]hat defeats the appropriation of a person is that he is necessarily occupied by his own will." [Ryan, Alan 1982. *The Romantic Theory of Ownership*. In *Property and Social Relations*. Ed. Peter Hollowell. London: Heinemann, 57]

This theme was even more central to Hegel's treatment of inalienability.



One of the best statement of the inalienability theory was in the work of Georg W. F. Hegel (1770 – 1831). The embodying of one's will in things through purposive human activity or labor is the basis of appropriation.

"A person has as his substantive end the right of putting his will into any and every thing and thereby making it his, because it has no such end in itself and derives its destiny and soul from his will. This is the absolute right of appropriation which man has over all 'things'." [Hegel, *Philosophy of Right*, 1821, section 44]

Property is actualized will.

"But I as free will am an object to myself in what I possess and thereby also for the first time am an actual will. and this is the aspect which constitutes the category of property, the true and right factor in possession." [Ibid., section 45]

In spite of what strikes modern ears as abstruse metaphysical jargon, Hegel is developing a version of the labor or natural rights theory of property (i.e., the principle of imputing legal responsibility in accordance with factual responsibility in matters of creating or destroying property rights).

If property originates as the embodiment of will (i.e., the fruits of labor), then certain things are not eligible for appropriation since they already embody another human will.

"Since property is the embodiment of personality, my inward idea and will that something is to be mine is not enough to make it my property; to secure this end occupancy is requisite. ... The fact that a thing of which I can take possession if a *res nullius* is ... a self-explanatory negative condition of occupancy" [Ibid., section 51]

In becoming a person, an individual in effect takes possession of himself or herself, and thus becomes ineligible for appropriation by others.

"It is only through the development of his own body and mind, essentially through his self-consciousness's apprehension of itself as free, that he takes possession of himself and becomes his own property and no one else's." [Ibid., section 57]

Although Hegel waived in applying the argument to all people, it provided the fundamental argument against slavery.

"The alleged justification of slavery ... depend[s] on regarding man as a natural entity pure and simple, as an existent not in conformity with its concept The argument for the absolute injustice of slavery, on the other hand, adheres to the concept of man as mind, as something inherently free." [Ibid., Remark to section 57]

This anti-slavery argument provides more than just a critique of involuntary slavery. To voluntarily alienate something, we must be able to withdraw our will from it—to in fact vacate it and turn it over to the use of another person (like the services of a tool).

"The reason I can alienate my property is that it is mine only in so far as I put my will into it. Hence I may abandon (derelinquere) as a *res nullius* anything that I have or yield it to the will of another and so into his possession, provided always that the thing in question is a thing external by nature." [Ibid., section 65]

But alienation clearly cannot be applied to one's own person-ality.

"Therefore those goods, or rather substantive characteristics, which constitute my own private personality and the universal essence of my self-consciousness are inalienable and my right to them is imprescriptible." [Ibid., section 66]

An individual cannot in fact vacate and transfer that responsible agency which makes one a person.

"The right to what is in essence inalienable is imprescriptible, since the act whereby I take possession of my personality, of my substantive essence, and make myself a responsible being, capable of possessing rights and with a moral and religious life, takes away from these characteristics of mine just that externality which alone made them capable of passing into the possession of someone else. When I have thus annulled their externality, I cannot lose them through lapse of time or from any other reason drawn from my prior consent or willingness to alienate them." [Ibid., Remark to section 66]

This is, to our knowledge, one of the clearest statement of the *de facto* inalienability argument in the history of Western philosophy.



James M. Buchanan (1919-2013) was a Nobel-prize-winning classical liberal economist. He started his career in a famous book *The Calculus of Consent* (1962) coauthored with Gordon Tullock. Behind much elaboration, the main point was the classical liberal juxtaposition of consent versus coercion. But the criterion of consent requires a theory of property to specify where one's consent is relevant. Hence I moved on from *The Calculus of Consent* to the development of the modern treatment of the labor theory of property, better seen as the property-theoretic application of the standard notion of imputing legal responsibility in accordance with de facto responsibility. On the political side, it led to the development of the modern theory of inalienable rights where the key feature of a contract is not just being voluntary (of course that is a necessary condition) but whether it is a contract of delegation or alienation. Inalienable rights theory would rule out personal alienation contracts like the self-sale contract, the nondemocratic constitution of subjection (*pactum subjectionis*), the coverture marriage contract, and finally the self-rental or employment contract. Hence only delegation, not alienation, is required in a just normative order. The mature Buchanan, by his own route, arrived at the same conclusion.

"The justificatory foundation for a liberal social order lies, in my understanding, in the normative premise that individuals are the ultimate sovereigns in matters of social organization, that individuals are the beings who are entitled to choose the organizational-institutional structures under which they will live. In accordance with this premise, the legitimacy of social-organizational structures is to be judged against the voluntary agreement of those who are to live or are living under the arrangements that are judged. The central premise of individuals as sovereigns does allow for delegation of decision-making authority to agents, so long as it remains understood that individuals remain as principals. The premise denies legitimacy to all social-organizational arrangements that negate the role of individuals as either sovereigns or as principals." [Buchanan, James M. 1999. *The Logical Foundations of Constitutional Liberty: The Collected Works of James M. Buchanan Vol. 1*. Indianapolis: Liberty Fund. p. 288]

Buchanan, like Jefferson, did not fully develop the radical implications of his enunciated principles for his own society.



From Wikipedia: "Ernst Johannes Wigforss (24 January 1881–2 January 1977) was a Swedish politician and linguist (dialectologist), mostly known as a prominent member of the Social Democratic Workers' Party and Swedish Minister of Finance. Wigforss became one of the main theoreticians in the development of the Swedish Social Democratic movement's revision of Marxism, from a revolutionary to a reformist organization. He was inspired and stood ideologically close to the ideas of the Fabian Society and guild socialism and inspired by people like R. H. Tawney, L.T. Hobhouse and J. A. Hobson. He made contributions in his early writings about industrial democracy and workers' self-management."

From an early 1923 report on industrial democracy, he stated the basic fact about the factual inalienability of labor that make the so-called "labor contract" for the purchase or sale of human labor, i.e., the human rental contract, inapplicable. Here is the key quote:

"There has not been any dearth of attempts to squeeze the labor contract entirely into the shape of an ordinary purchase-and-sale agreement. The worker sells his or her labor power and the employer

pays an agreed price. What more could the worker demand, and how could he or she claim a part in the governance of the company? It has already been pointed out that the determination of the price can necessitate a consensual agreement on how the firm is managed. But, above all, from a labor perspective the invalidity of the particular contract structure lies in its blindness to the fact that the labor power that the worker sells cannot like other commodities be separated from the living worker. This means that control over labor power must include control over the worker himself or herself. Here perhaps we meet the core of the whole modern labor question, and the way the problem is treated, and the perspectives from which it is judged, are what decide the character of the solutions." [Wigforss, Ernst. 1923. *Den Industriella Demokratiens Problem 1*. Stockholm: A.-B. Hasse W. Tullbergs boktryckeri. p. 28] (translation by: Patrik Witkowski)
— with [Ernst Wigforss](#).



Karl R. Popper (28 July 1902 – 17 September 1994) was an Austrian-British philosopher and professor. He is generally regarded as one of the greatest philosophers of science of the 20th century.

In his treatment of Kant's doctrine of autonomy, he emphasizes the inalienability of responsibility even for following commands (when not physically coerced).

"For whenever we are faced with a command by an authority, it is for us to judge, critically, whether it is moral or immoral to obey. The authority may have power to enforce its commands, and we may be powerless to resist. But if we have the physical power of choice, then the ultimate responsibility remains with us. It is our own critical decision whether to obey a command; whether to submit to an authority." [Popper, Karl R. 1965. *Conjectures and Refutations: The Growth of Scientific Knowledge*. New York: Harper & Row, p. 26]

"Kant's Copernican Revolution in the field of ethics is contained in his doctrine of autonomy the doctrine that we cannot accept the command of an authority, however exalted, as the ultimate basis of ethics. For whenever we are faced with a command by an authority, it is our responsibility to judge whether this command is moral or immoral. The authority may have power to enforce its commands, and we may be powerless to resist. But if we have the physical power of choice, then the ultimate

responsibility remains with us. It is our decision whether to obey a command, whether to accept authority." [Ibid. pp. 181-2]

This goes back beyond Kant to Luther concerning the inalienability of conscience meaning that one cannot escape responsibility for one's religious beliefs ("conscience" in that sense) even if one decides to believe whatever the priest or Pope says.



Ernst Alfred Cassirer [July 28, 1874 – April 13, 1945) was a German philosopher. Trained within the Neo-Kantian Marburg School, he initially followed his mentor Hermann Cohen in attempting to supply an idealistic philosophy of science.

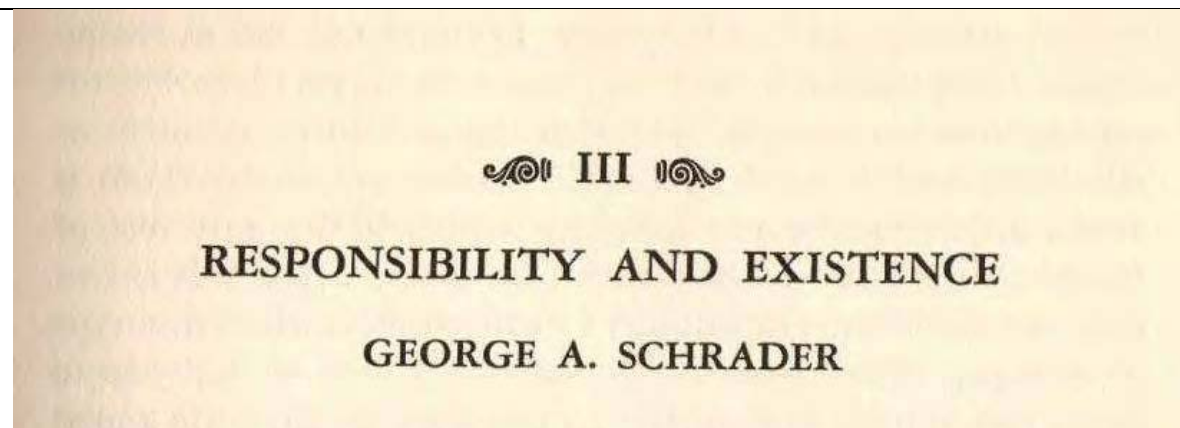
After Cohen's death, Cassirer developed a theory of symbolism and used it to expand phenomenology of knowledge into a more general philosophy of culture. Cassirer was one of the leading 20th century advocates of philosophical idealism. His most famous work is the *Philosophy of Symbolic Forms* (1923-1929).

“There is, at least, *one* right that cannot be ceded or abandoned: the right to personality. Arguing upon this principle the most influential writers on politics in the seventeenth century rejected the conclusions drawn by Hobbes. They charged the great logician with a contradiction in terms. If a man could give up his personality he would cease being a moral being. He would become a lifeless thing—and how could such a thing obligate itself—how could it make a promise or enter into a social contract? This fundamental right, the right to personality, includes in a sense all the others. ... There is no *pactum subjectionis*, no act of submission by which man can give up the state of free agent and enslave himself. For by such an act of renunciation he would give up that very character which

constitutes his nature and essence: he would lose his humanity.” [Cassirer, Ernst. 1963. *The Myth of the State*. New Haven: Yale University Press, 175]

“No one can believe for another and with the help of another; in religion, everyone must stand on his own and dare to wager his entire self. ...

There is no doubt that with these propositions Rousseau once more returned to the actual central principle of Protestantism; but this very return was a genuine discovery in view of the historical form of Protestantism in the eighteenth century.” [Cassirer, Ernst. 1963. *The Question of Jean Jacques Rousseau*. Translated by Peter Gay. Bloomington: Indiana University Press. pp. 117-8]



George A. Schrader (1917-1998) Yale philosophy professor specializing in Kant and phenomenology.

He gives a particularly clear description of the inalienability of responsibility and thus the fraudulent nature of a contract, such as the self-sale contract, that legally alienates responsibility. Per usual, he was unable to see that the analysis applied just as well to the contract to rent another person, the employment contract. Here is the key passage.

"Other persons make claims upon us and thus make us liable to them by existing in our world. In the most general terms they demand that we acknowledge them and treat them as persons. This is a demand, incidentally, which no man can forfeit by his own volition. No man can, for example, by selling himself as a slave make himself not to be a person. The relationship of master and slave which assumes this to be possible is founded upon a double deception. The slave fools himself no less than he fools the master; both fool themselves as well as each other. A man remains a man no matter what his condition in the world. He may not demand in any verbal way that he be treated as a man; in fact, he may even recommend that his humanity be disregarded. But the fact that he continues to exist as a man entails that his claim upon us as a human subject has not been removed. We are responsible for acting toward him not only in terms of what he says he is but in terms of what he in fact is. I can no more escape my responsibility toward the other because he regards himself as a slave than I can escape my responsibility toward myself by looking upon myself as a slave. A slave is, by definition, a human subject who is made to be simply a tool for the service of others. But no man can actually make himself

or another to be merely a slave; he can only make play the role of a slave. It is not difficult to exhibit the deception and bad faith involved in such a relationship." [Schrader, George A. 1960. "Responsibility and Existence." In *Responsibility*, edited by Carl J Friedrich, Nomos III:43–70. New York: Liberal Arts Press, p. 64]



Staughton Lynd (1929 -) in his excellent study *Intellectual Origins of American Radicalism* has highlighted precisely the inalienable rights theme in Hutcheson's thought and in the work of the Dissenters such as Richard Price as well as seeing the roots of this theme in the quest for religious freedom and liberty of conscience.

"When rights were termed 'unalienable' in this sense, it did not mean that they could not be transferred without consent, but that their nature made them untransferrable. This was a proposition peculiarly congenial to Dissenting radicalism. For it freedom of conscience was inseparable from moral agency." [Lynd, *Intellectual Origins of American Radicalism*, 1969, 45]

Due to the inability to voluntarily alienate moral agency (as we all see in the case of the hired criminal), "inalienable" did not just mean "unless with consent," as in liberal theory, but meant "inalienable even with consent."

"Then it turned out to make considerable difference whether one said slavery was wrong because every man has a natural right to the possession of his own body, or because every man has a natural right freely to determine his own destiny. The first kind of right was alienable: thus Locke neatly derived slavery from capture in war, whereby a man forfeited his labor to the conqueror who might lawfully have killed him; and thus Dred Scott was judged permanently to have given up his freedom. But the second kind of right, what Price called 'that power of self-determination which all agents, as such, possess,' was inalienable as long man remained man. Like the mind's quest for religious truth from which it was derived, self-determination was not a claim to ownership which might be both acquired and surrendered, but an inextricable aspect of the activity of being human." [Ibid., 56-57]

Lynd precisely summarized the de facto inalienability argument for inalienable rights.
— with [Staughton Lynd](#).



From Wikipedia: "Carole Pateman (born 11 December 1940) is a feminist and political theorist. She is known as a critic of liberal democracy and has been a member of the British Academy since 2007. Pateman was born in Sussex, England and has had an international career, living in four continents and teaching and doing research in three. Educated at a grammar school, she left at age 16. She entered Ruskin College, Oxford in 1963, attended Lady Margaret Hall, and became lecturer in political theory at the University of Sydney in 1972.

She earned a DPhil at the University of Oxford. Since 1990, Professor Pateman has taught in the Department of Political Science at the University of California at Los Angeles (UCLA), where she is now Distinguished Professor Emeritus. Professor Pateman served as (the first woman) President of the International Political Science Association (1991–94). In 2007, she was named a Fellow of the British Academy. She served as President of the American Political Science Association in 2010–11. She is also an Honorary Professor for the Cardiff University School of European Studies. She gave the Faculty Research Lecture at UCLA in 2001, and is a Fellow of the American Academy of

Arts and Sciences, the British Academy and the UK Academy of Social Sciences. She holds honorary degrees from the Australia National University, the National University of Ireland, and Helsinki University. In 2012 she was awarded the Johan Skytte Prize in Political Science."

On the inalienability of labor and the inapplicability of the labor contract, here is the relevant quotes from her book "*The Sexual Contract*"

"The contractarian argument is unassailable all the time it is accepted that abilities can "acquire" an external relation to an individual, and can be treated as if they were property. To treat abilities in this manner is also implicitly to accept that the "exchange" between employer and worker is like any other exchange of material property." [Pateman, Carole. 1988. *The Sexual Contract*. Stanford: Stanford University Press.8, p. 147]

"The answer to the question of how property in the person can be contracted out is that no such procedure is possible. Labour power, capacities or services, cannot be separated from the person of the worker like pieces of property." [p. 150]

The same idea about the inalienability of labor keeps occurring over and over again to those who are prepared to "see" it. Compare to the Wigforss quote.



George Hamilton Smith (born February 10, 1949, Japan) is an American author, editor, educator and speaker, known for his writings on atheism and libertarianism.

"This argument (which has a long ancestry) illustrates the historical connection between inalienable rights and religious freedom – or "liberty of conscience," as it was often called. Although the ideological origins of liberal individualism were complex and multifaceted, this concern with the inalienable rights of conscience was the foundation from which many other features of the Lockean paradigm arose. ... Emerging from the centuries-long struggle for religious freedom, the idea of conscience was gradually expanded by liberals to include other areas of social interaction." (Smith, George H. 2013. *The System of Liberty: Themes in the History of Classical Liberalism*. New York: Cato Institute, Cambridge University Press. 111)

Smith also emphasizes that this is a strong notion of inalienability since it is part and parcel of our personhood.

“The sphere of inner liberty gradually developed into the notion of inalienable rights. As we have seen, an inalienable right cannot be surrendered or transferred by any means, including consent, because it derives from a person's nature as a rational and moral agent. For example, we cannot alienate our right to freedom of belief, because our beliefs cannot be coerced. Similarly, we cannot surrender our right of moral choice, because an action has moral significance only if it is freely chosen. Our beliefs and values fall within the sphere of inner liberty, the domain of conscience. This sphere is inseparable from our nature as rational and moral beings; it is what elevates us above animals to the status of persons.” (Ibid., 114)

“Although the appeal to inalienable rights first arose in the context of religious freedom, it was quickly extended to spheres other than religion, as we find in Jefferson's appeal to the inalienable rights of “Life, Liberty and the pursuit of Happiness.” This was one of the most significant developments in the history of libertarian thought.” (Smith, George H. 2017. *The American Revolution and the Declaration of Independence: The Essays of George H. Smith*. Washington D.C.: Cato Institute., 118-9)

“This supposed contract, according to the theory of inalienable rights, is no contract at all, because nothing has been transferred. The slavery contract makes no more sense than if Murphy had agreed to give me an absolute property right in his subjective beliefs and values. Regardless of whether he “consented” or not, a right cannot be alienated unless the object of that right is capable, in principle, of being transferred from one person to another. And, as I argued in my essay, moral agency cannot be transferred, abandoned, or forfeited. Moral agency is inalienable, and so must be the right to exercise that agency.” (Smith, George H. 1997. “Inalienable Rights?” *Liberty* 10 (6): 51–56., 53-4)

“Thus “inalienable” in this sense refers to rights that *cannot* be transferred to another, not to rights that merely *should not* be transferred to another. If the subject of a right—such as the ability to reason and judge—cannot be alienated, then neither can the right associated with that subject.” (Smith, George H. 2013. “George H. Smith and ‘The System of Liberty.’” *Liberty Matters*, Liberty Fund. September., 27-28)

“This slavery contract is invalid not because it is morally reprehensible, but because it is physically impossible. The ‘terms’ of the contract correspond to nothing in the real world.” (Smith, George H. 1997. “Inalienable Rights?” *Liberty* 10 (6): 51–56., 54)