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Francis Lieber: Anglican and Gallican Liberty Reading and Study Guide

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FRANCIS LIEBER: ANGLICAN AND GALLICAN LIBERTY

READING AND STUDY GUIDE, 1999-2000

Steven Alan Samson

NOTE: The following essay appeared originally in a newspaper published at Columbia, South Carolina, June 7, 1849, and is obviously suggested by recent events in France. Professor Mittermaier, of Heidelberg, caused the article to be translated and printed in the *Zeitschrift für ausländische Gesetzgebung*, xxi. Bd., 2 Hft. (1849). A few notes subsequently made by Dr. Lieber upon a copy partially prepared for republication are here subjoined to the essay as originally published. Reference should be made, in connection with this paper, to the author's remarks on the same subjects in his *Civil Liberty*.—G.

If the term Liberty, which always means unrestrainedness of action,¹ is applied to matters of civil society, it necessarily chiefly signifies protection of the free action of each member against the individual interference of any other member, and against society collectively, or public power.

Since, however, perfect freedom of action is impossible in any society, because every member claims the same freedom of action, and the society itself has its own important ends, as society collectively taken, it is obvious that civil liberty must always mean something relative. We designate, therefore, by civil liberty, the highest amount of that untrammelled and well-guaranteed action or absence of interference which is compatible with a social state and with the objects of a government established to obtain, by united energy, that which is considered essential to each member, but cannot, or ought not, to be obtained by individual exertion. If, then, on the one hand, we never speak of liberty where we do not find a very high degree of well-secured independent action, it is natural on the other hand, that the idea of civil liberty varies with the different views which men may take, at the various stages of civilization, of that which is essential to man—in other words, of the essentials of humanity and the object and purpose of his terrestrial life. It follows that it is not inconsistent to speak of ancient liberty as contradistinguished to modern; for the ancients viewed man in his highest phase as citizen. The human being was, according to them, man, in the truest and noblest sense of the word, only as member of the state; but Christianity and modern civilization place the individual, with his individual responsibility, his personal claims, and his individual immortal soul as the highest object, and the state, law, and government, however vitally important to each person and to civilization, are for the moderns still but a means to obtain the yet higher

¹ Freedom, in its highest acceptation, means the faculty of willing, and the power of doing what has been willed, unrestrained by any extraneous influence—it means perfect self-determination. Absolute freedom, therefore, can be imagined only in conjunction with perfect power. The Almighty alone is perfectly free. To all other beings we can attribute freedom, but only in an approximate or relative sense. As to the synonyms freedom and liberty, the former is personal, individual, and relates to the whole being; the latter is granted, guaranteed, and, therefore, generally of a public character. The slave receives freedom, the captive liberty. We speak of the freedom of will, and of civil liberty. The same distinction is, I think, even traceable in the two expressions, freedom of speech and liberty of conscience; for freedom of conscience always exists, but when this freedom comes to be guaranteed by the laws of a country as a right to worship as the citizen chooses, we call it liberty of conscience, because it is an external guarantee of the internal freedom.

objects of humanity.

It is equally clear, that for all practical purposes, we mean, by the word liberty, certain measures and institutions which secure the enjoyment of that which constitutes liberty in the opinion of men at any given period. Thus we find that Aristotle, when he speaks of liberty in his Politics (and not in his metaphysical works), means peculiar institutions. He goes farther: certain institutions serve him as tests whether liberty did or did not exist in the state which he had under contemplation; and in modern times we find that, while individuals might not easily agree upon the true import of the word liberty, if considered in a general sense, entire nations are agreed among themselves, with a remarkable degree of unanimity, upon the political principles and measures necessary for the establishment or perpetuation of liberty. There exist, of course, some differences. One civil society will consider a certain institution as a necessary element of substantial civil liberty, which may not appear in the same light to others; perhaps because they have not yet arrived at the same degree of civil development; but, as it has been stated already, the unanimity of the Europeans and their descendants in America, upon this subject, is remarkable, and furnishes a very high degree of presumption that those institutions, established or struggled for, are in reality necessary for freemen.

These guarantees, the bulk of which, in modern times, is termed liberty, will be found to consist in the highest protection of the individual and of society, chiefly against public power, because it is necessarily from this power that the greatest danger threatens the citizen, or that the most serious infringement of untrammelled action is to be feared.

Civil liberty, then, consists, as the free modern nations understand it, according to the present standard of political civilization, in:

Protection of communion; liberty of the press; and what is called protection of the epistolary secret.

The right of the people, in the highest acceptation of the word, to adopt that government they think best; no extra governmental power, which yet deeply affects the government, except the sovereignty of the people; no divine right.

Full protection of person; no arrest except by law, and speedy trial after arrest; the *habeas corpus* principle, with a system of fair bailment.

Free choice of residence, and free locomotion; the right of emigration; free egress and ingress.

Full protection of every man's religion or worship; liberty of conscience.

Protection of free production and exchange, as the individual thinks best, and a high protection of property, acquired or acquiring; no taxation (which is a demand of part of property) without consent of the tax-payer (the owner of the property).

Submission to laws and lawful authority alone; the perfect right of resisting unlawful authority, or unlawful demands, though made by lawfully installed authority.

No submission to laws except those which the citizen has contributed to

form and pass, and an organism by which public opinion is gathered, settled, mutually modified, and passed into public will, that is law; and by which, on the other hand, public reason and carefully formed public opinion are secured against merely general and passionate opinion of society itself, or of the multitude.

Security against absolutism, that is, dictation by power, whether it be the dictation of one or of the unmitigated power of the multitude.

Popular control over public funds.

The right of peaceably meeting and discussing public matters; the right of petitioning.

A share of the people in the administration of justice, and a guarantee against purely formal justice; trial by jury.

Certainty of a trial by common courts as established by law; no extraordinary courts or commissions.

A highly-protected penal trial, and especially a trial for treason, hedged in by the safest guarantees of the rights and safety of the individual against the prosecuting public power; defence of the accused by counsel.

The right of association for religious, moral, industrial, scientific, or political purposes.

Political equality or absence of privileges for the benefit or the privileged or privileged classes.

Protection of lawful opposition to the administration and protection of the minority against the majority.

Security that the people be well informed of their government; publicity of all administration of justice; of the finances and legislative debates, and of whatever may be public without injury to the public service.

Arming of the citizens.

Submission of the army to the law; no standing army, or a small one only, and votes of money supply for the same at short intervals; the mutiny-bill principle.

Security against the absorbing sway and domination of the central government; the communities, as towns, districts, etc., administering their own affairs.

Supremacy of the law over every one, crown or citizen; consequently no "power of dispensation."

Consequently, where enacted (written) constitutions exist, the authority of the proper courts to declare laws as conflicting with the fundamental law or constitution; security that the national sense ultimately prevail, and, consequently, dependence of the executive upon supplies—or, which amounts to the same thing—a government by parties; that is, men who stand pledged upon principles and measures of national magnitude, and not a government by the will of the executive, independent of the people; or by intrigues of individuals, or by administrations forming no homogeneous whole.

Responsibility of ministers; responsible officers, each of whom remains individually responsible for what he does, even though commanded to do so by rightful authority.

Security that the national sense control, whether directly or indirectly, yet truly, the power of making war and peace.

An independent judiciary and the independence of the law.

Protection of aliens and foreigners, no *droit d'Aubaine*.

Hence common law and the principle of the *precedent*. The last is at least acknowledged as indispensable to civil liberty by the English and Americans, but not yet on the European continent.

Generally the guarantee of all these rights in a constitution, that is fundamental law, superior to government. This is especially important; mere usage, as in England, does not stand instead of it.

In summing up these principles and institutions, it appears that they are guarantees of the security of individual property, of personal liberty, and individual humanity, of the security of society against the assaults or interference of public power, of the certainty with which public opinion shall become public will in an organic way, and of the protection of the minority. Many of these have originated, nearly all of them have first been developed, in England; but they are not confined to that country, nor have all of them, by any means, been developed in as high a degree in England as in America. In all countries where civil liberty is aimed at these principles have been adopted, more or less. We are justified, then, in saying, that when we speak in a practical sense of modern liberty, we mean these practical provisions and political contrivances. It is they that constitute the difference between this our modern, national, broad-cast liberty and the medieval liberty, which was characterized by isolating political independence, by chartered freedom. "In the Middle Ages, governments chartered liberty; in our times, the people, or popular liberty, charters governments."²

² Wherever modern civil liberty has been established, no matter in what country, we find the following contests; under whatever name, the principle is the same, for the contending agents are the same, namely, Power and Liberty:

The *letter de cachet*, or general warrant—*i.e.*, arrest on the ground of its having been ordered by the executive. In England it began seriously under James L. The history of the general warrant is a most interesting thread in English history.

Proclamation, or pretence of power above law, and connected with this the dispensing power. Chief-Justice Fleming, when chief baron, in 1604, decided that the king had the undoubted right to levy whatever import tax he thought fit. This case is called "The Great Case of Impositions." Parliament had passed an impost of 2s. 6d. per cwt. Upon currants, and James and added 7s. 6d. per cwt. Bates, a Levant merchant, went to law, and Fleming made a long, outrageous speech in favor of the king's power. Lord Campbell (Chief Justices of England, i. 234) says that if the British commerce had then been as important as now, there would have been an end to parliaments, for any government might have supported itself by import tariffs. He also expresses surprise that no historian mentions this solemn though outrageous decision. It is one of the many pieces of great good fortune in British history.

An army, independent of parliament and people. As now, in Prussia, the struggle *not* to let the army take the oath on the constitution. A standing army.

Taxation without a legislature, either entire or partially, and the ardent endeavor to rule without

It is obvious, that, where so many important principles are in action, one or the other may be more active than the rest, or may be developed even to the injury of some of the others; so that in the sphere of political freedom there arise, as in all spheres of unfettered action, different schools, to borrow a term from the province of philosophy and that of the arts. It is thus that we have in the province of political freedom an Anglican and Gallican school. The term Anglican has been adopted here for want of a better one. We stand in need of a term which designates characteristics peculiar to the Anglican race in Europe, here, and in other parts of the world. If they are not all peculiar to this race, they are at least characteristics, which form very prominent marks of its politics.

It is by no means the object here to show the gradual development of modern liberty and of the Anglican characteristics, their causes, and the circumstances under which they developed themselves, but rather to point out in what at this moment consist the striking features of these two political schools. With this view, it may be stated at once, that Anglican liberty distinguishes itself above all by a decided tendency to fortify individual independence, and by a feeling of self-reliance. The higher the being stands in the scale of nature, the more distinct is its individuality until it reaches in man its highest degree, and among men again we find the same principle prevailing. The higher, the more intellectual, and the more ethical the being is, the more prominent is also his own peculiar individuality. The same progress is observed in the scale of civil liberty. Individuality is almost annihilated in absolutism—whether this be of a monarchical or a democratic cast—while the highest degree of freedom (in the Anglican view of the subject) brings out the individuality of every one, and the individual activity of each, as best it seems to him, in its freest play. Independence in the highest degree, compatible with safety and broad national guarantees of liberty, is the great aim of Anglican liberty, and self-reliance is the chief source from which it draws its strength. At no period has the deplorable absorbing concentration of power, which characterized the political systems of the continent of Europe, during the seventeenth and eighteenth centuries, obtained a footing among the Anglican peoples, although it was several times strenuously attempted. All the maxims of the common law, most dear to the people, and most frequently quoted with pride as distinguishing it favorably from the civil law, embody this manly feeling of individual independence.

Everywhere is liberty considered by the Anglican nations to consist, in a very high

parliaments, which succeeded wherever the government was able to obtain a revenue without the consent of the legislature.

Extra courts of justice, commissions, etc.; arbitrary trials for high treason.

Extinction of the liberty of the press, and of discussion and opposition.

Whenever a new power grows despotic, these things are struggled for again. Thus the people first wrest them from the monarch; but where the popular power becomes despotic in turn, all these things are claimed again by the people, for instance, in France during the revolution, and by Cromwell in England. Wise men, therefore, leave these powers in the hands of no one.

degree, in a proper limitation of public power. Anglican liberty may be said to consist, essentially, in a proper restriction of government, on the one hand, and a proper amount of power on the other, sufficient to prevent mutual interference with this personal independence among the people themselves, so that order and a law-abiding spirit becomes another of its distinctive features. No people of the past or present have ever made use of the right of association, even where it fully existed, equal to the vast, and at times gigantic application of this right, to great practical purposes of a social, as well as political, character among the English and Americans. Public interference is odious to them. Government with them, is not considered the educator, leader, or organizer of society. On the contrary, in reading the many constitutions which this race has produced, and the object of which is to define the spheres of the various public powers, and to fix the rights of the individual, we almost fancy to read over all of them the motto, "Hands off."

This tendency of seeking liberty, above all, in untrammelled action, has produced among others the following great effects.

The untrammelled action or absence of public interference (which of course must in its nature be almost always of an executive character) has not been restricted to individuals, but as a matter of course, the spirit has extended to institutions and whole branches of power, so that time was allowed to them to grow, to develop themselves, and to acquire their own independent being; consequently, we find the word law possesses a meaning very different from that which the corresponding words have even in their most comprehensive sense, with other nations; we find a common law rooted deeper in the people than any enacted law or constitution; we find a parliamentary law (no "*reglement*"); we find the indispensable principle of the precedent of greater power than minister or crown, even though it be worn by a Stuart, or a Henry the Eighth.

Secondly, a consequence of the principle of self-reliance is, that liberty is conceived far more essentially to consist in a great amount of important rights, than in a direct share in the government. The latter is sought after as a security and guarantee for the former.

Thirdly, Anglican liberty consists in or produces the utmost variety, as all untrammelled life and unfettered individual action necessarily does. Equality (if sought in aught else than in equality of freedom from interference, and if believed to consist in uniformity alone) is monotony, and becomes the opposite to life and action.

Fourthly, the Anglican race has mixed up subjects purely social with politics, far less than any other race, and it may be safely averred, has allowed itself to be less misled by phantoms, and adhered more to positive realities in the sphere of public life, than any other division of mankind.

Every great principle or movement of mankind has its own characteristic fanaticism, caricature, or mischievous extravagance. This applies to all movements, religious, social, or political, and Anglican individualism leads, if carried beyond its proper line, to selfish isolation and heartless egotism. The fanaticism of Anglican individualism is

Utilitarianism as it has been taught by some. But it must not be forgotten that we speak here of civil liberty alone. No American, or Englishman, has ever maintained that we can do without patriotism, without devotion to the public, and it is a striking fact, admitted by all, that nowhere is shown so much public spirit, during successive periods, as by the Anglican people, although it might have been supposed that their individualism would have led to the opposite. The reason is, that Anglican liberty makes the people rely upon themselves, and not upon public power; they feel, therefore, that they ought to help declared, in one of his proclamations, that France should imitate the example of Paris, which he called the center and representative of French virtue, intelligence, action, and patriotism. How strange a similar declaration of an English minister, with reference to London, would sound in the ear of an Englishman, or of our President with reference to New York, or any state of ours!³

Concentration of the most stringent kind existing, and it being neither disrelished nor suspected by the people, it is obvious that, coupled with the idea of liberty, in contradistinction to despotism, it can produce no other idea than equality—an equal change of “ruled and being ruler”; and since equality, with this political meaning, is a practical impossibility with a nation so vast as the French, we have the further consequence that, practically speaking, equality means in France always the exclusive sway of a certain class. He that seeks now to sway is the *Ouvrier*, and *Bourgeoisie* has actually become a name of shame or hatred, as the term *noblesse* had become in the first revolution.

Gallican liberty, then, is sought in the *government*, and, according to an Anglican point of view, it is looked for in a wrong place, where it cannot be found. Necessary consequences of the Gallican view are, that the French look for the highest degree of political civilization in *organization*, that is, in the highest degree of interference by public power. The question whether this interference be despotism or liberty is decided solely by the fact *who* interferes, and for the benefit of which class the interference takes place, while according to Anglican views this interference would always be either absolutism or aristocracy, and the present dictatorship of the *ouvriers* would appear to us an uncompromising aristocracy of the *ouvriers*.

The universal acknowledgment of organization makes the Frenchmen look for every

³ The most remarkable fact in history, so far as centralization is concerned, is probably the last French revolution (of 1847). A minority—but allow even a majority—of a single city changes a monarchy into a republic; the republic is telegraphed into the provinces and France is a republic, without any attempt at resistance, any show of adhesion to the former government, any struggle. If all France had been so thoroughly prepared for the republic (which we now know was not the case) that nothing more than the breathing of the name was adversary, the former government must long before have collapsed. And if this was not the case, the so-called republic would not have been received so easily, were not the French accustomed to receive everything from Paris, fashions, pronunciations, and orders, and even now telegraphic dispatches telling the prefect Monsieur so and so, that *Il n'y a plus de roi*, or some such thing. Is not the people in a very abject state where such things can occur? Is this not Russian? Does it not remind of the worst times of Rome? The French often, may, almost universally, confound this submission to Paris with laudable patriotism. But this only shows the more the absorbing centralization which exists in France.

improvement at once to government.⁴ Self-reliance does not exist in detail. While the British race seeks for one of the great applications of liberty in free trade, the French call for organization of labor, and M. Louis Blanc has proposed a plan, accordingly, which would appear to us as insufferable tyranny, and annihilation of individuality. While we have seen, in the anti-corn-law league, a mighty private association coping with the most powerful interest that ever existed in a legislature, the British land-owner, and ultimately forcing government to fall into its own ranks, we do not find a solitary club in Paris pursuing one detailed practical measure, but all discuss the best *organization*, and to the minister of justice, and of worship, and others whom previous “organization” had already created, a minister of labor, and even one of progress has been added, if the papers have informed us correctly. In Anglican liberty the movement not only begins with the people, but also the practical carrying out. In France, liberty is expected to begin practically with government organization, and to descend to the people.

⁴ All that I have said is exhibited in a very striking manner in a speech of Victor Hugo’s, in July, 1850, on the new law of the press, a speech full of beauties and error, as almost all of his discourses are. I have added the chief passage having especial reference to the subject here treated.

“Messieurs, quoique les vérités fondamentales, qui sont la base de toute démocratie, et en particulier de la grande démocratie française aient reçu le 31 mai dernier une grave atteinte, comme l’avenir n’est jamais fermé, il est toujours temps de les rappeler à une assemblée législative. Ces vérités, selon moi, les voici :

“La souveraineté du peuple, le suffrage universel, la liberté de la presse, sont trois choses identiques, ou, pour mieux dire, c’est la même chose sous trois noms différents. A elles trois, elles constituent notre droit public tout entier: la première en est le principe, la seconde en est le mode, la troisième en est le verbe. La souveraineté du peuple, c’est la nation à l’état abstrait, c’est l’âme du pays; elle se manifeste sous deux formes: d’une main, elle écrit, c’est la liberté de la presse; de l’autre, elle vote, c’est le suffrage universel.

“Ces trois choses, ces trois faits, ces trois principes, liés d’une solidarité essentielle, faisant chacun leur fonction, la souveraineté du peuple vivifiant, le suffrage universel gouvernant, la presse éclairant, se confondent dans une étroite et indissoluble unité, et cette unité, c’est la République.

“Et voyez comme toutes les vérités se retrouvent et se rencontrent, parce qu’ayant le même point de départ, elles ont nécessairement le même point d’arrivée! La souveraineté du peuple crée la liberté, le suffrage universel crée l’égalité, la presse, qui fait le jour dans les esprits, crée la fraternité.

“Partout où ces trois principes, souveraineté du peuple, suffrage universel, liberté de la presse, existent dans leur puissance et dans leur plénitude, la République existe, même sous le mot monarchie; là où ces trois principes sont amoindris dans leur développement, opprimés dans leur action, méconnus dans leur solidarité, contestés dans leur majesté, il y a monarchie ou oligarchie, même sous le mot République.

“Et c’est alors, comme rien n’est plus dans l’ordre, qu’on peut voir ce phénomène monstrueux d’un gouvernement renié par ses propres fonctionnaires. On d’être renié à être trahi, il n’y a qu’un pas!

“Et c’est alors que les plus fermes cœurs se prennent à douter des révolutions ces grands événements maladroits qui font sortir de l’ombre en même temps de si hautes idées et de si petits hommes!

“Des Révolutions, que nous proclamons des bienfaits quand nous voyons leurs principes, mais qu’on peut, certes, appeler des catastrophes quand on voit leurs ministres!

“Je reviens, messieurs, à ce que je disais.”

This is so true, that a large number of the French (we believe it to be a minority, but it is the active and loud minority) seem to have wholly discarded the idea that liberty is the main object to be striven for, and call for a *social* reorganization, and a very busy and wide-spread club at Paris has actually hoisted a banner on which the word Liberty is omitted, bearing the following device: Equality, Solidarity, Fraternity. Here, then, we have the caricature of French liberty, as we have in ultra-utilitarianism that of Anglican freedom. Equality and solidarity are necessary elements of all politics. Without solidarity no nation could be a nation, no state a state. Every one is obliged to bear with laws which he considers bad, or the consequences of a war which he condemns. It is the price we pay for living in a civil society; but if solidarity be elevated into a distinctive mark of a specific political or social system it is the death-blow to individualism, and a Spartan republic, destroying the family, must be the consequence. Here, too, is to be found the reason of the striking phenomenon, that at all periods the fanatics who have attempted the abolition of private property always made war against exclusive or individual marriage at the same time. Many communists have preached it, and many religious fanatics in the Middle Ages have attempted it.

The fact that Gallican liberty expects everything from *organization*, while Anglican liberty inclines to *development*, explains why we see in France so little improvement and expansion of institutions;⁵ but when improvement is attempted, a total abolition of the preceding state of things—a beginning *ab ovo*—a re-discussion of the first elementary principles.

Anglican liberty produces variety, as was stated before, and demands absence of unnecessary restraint; Gallican liberty demands uniformity and even uniforms, so odious to Americans. A proclamation of the provisional government, dated April 30, actually begins with the words: “Considering that the principle of equality implies uniformity of costume for the citizens called to the same functions,” etc., prescribing a costume—coat, waistcoat, and pantaloons, to the members of the national assembly—that assembly which, according to the expression of the provisional government itself, is the highest representative of national sovereignty that has ever assembled, and into whose hands that same provisional government will lay down its power. Nothing can show more distinctly the difference between Anglican and Gallican liberty than that this order was possible.

⁵ Lamartine, in his famous speech on the law of election, May 23, 1850, speaks of this very thing. He calls it the French *impatience du mieux*. This is very true as far as it goes. I have spoken of impatience as a most dangerous element in politics, as in all else, in my Ethics; but Lamartine would have been more philosophical, would have gone farther back to the principle, as well as farther on to the practical results and mischiefs, had he seized upon the subject as I have done here. This impatience is both cause and effect of the fact that the French, whatever they may have been once, have been made, since the times of Richelieu and Louis XIV., and *un-institutional* people. Institutions—the idea of letting them grow, changing, amending, as the times suggest changes and amendments, and allowing them their own existence and expansion without continually having the executive and legislative finger on them—are founded upon and require the very principles of patience. In this the English have given the most illustrious example, although at times this principle, as all others, is carried to a degree of caricature, as illustrated in the lord chancellor’s unsightly, untimely, and burlesque wig.

In England and America, the principle of liberty dictates that all that can be done by private enterprise ought to be left to it, and that the people ought to enjoy the fruits of competition in the highest possible degree. In France, on the other hand, the provisional government made arrangements to buy up all the railways so soon as the king had been expelled.

All political changes, according to Anglican liberty, are intended more efficiently to protect the changes which society has worked for itself; according to Gallican liberty, the great changes are intended to be, not political, but social, organized by government: that is, according to Anglican liberty, forced upon society by the successful party, which, nevertheless, may be a very small minority, owing to the peculiar power which, in the great system of concentration, Paris exercises over France, and which all movable masses exercise over populous cities—an influence considered salutary according to Gallican views of liberty, and disastrous according to Anglican.

The object of this paper has been to show the difference of the two schools, and it would be foreign to the subject to dwell upon the generous enthusiasm which pervades at this moment large parts of the French people, and, coupled as it is with the fearful reminiscences of former days, has produced some very remarkable effects; but enthusiasm cannot last, and, if it could, it cannot become a substitute for individualism, an indispensable element of our ethical nature. Enthusiasm is a necessary element of all great actions of individuals as well as masses, but he who founds upon it plans of a permanent state of things, whether in worship or politics, deprives his system of durability. Nothing can insure principles against an early withering but institutions. No ruler, however popular or brilliant, no period, however glorious, and no enthusiasm, however generous, can produce lasting good if they do not lead first of all to the foundation of expansive institutions. Nations must neither depend upon popular rulers, nor trust their own enthusiasm. If they do, everything is frail and evanescent, and the continuity of the state, without which there is no law, order, strength, or greatness, is rendered impossible.

This remark leads us to the last observation we mean to make upon the difference of Anglican and Gallican liberty. The Anglican race is a decidedly institution-loving and institution-building race, as the Romans were, who built up the civil law. They are conservative as well as progressive, and believe that conservatism is as necessary an element as progression. The fanaticism of conservatism is a Chinese idolatry of the past and the old. The French, on the other hand, as they appear, at least in modern times, are philosophizing, often brilliant, organizers, and resemble in this more the Greeks, who built up no law but whose philosophers proposed invented governments. The fanaticism of this disposition is a restless re-beginning at every step and denial of the necessity of continuous progress.

It must have appeared to the reader that the writer of this paper is an advocate and lover of the principles of Anglican liberty; that he believes the French are mistaking democratic absolutism for democratic liberty; that the whole continent will have to pass

through long periods of ardent struggle before it can rid itself of the consequences of the unhallowed centralization, which absolute princes in their blindness mistook for power, and fastened upon the people; that he is a devoted friend to independence, and the liberty of the individual, which, in his opinion, need be as little connected with selfishness as Christianity is, although this religion, above all others, throws man upon his individual responsibility, thus raising him immeasurably; that, however dazzling the effects of democratic absolutism occasionally may be, it is still not freedom, which, like dew, nourishes every blade in its own individuality, and thus produces the great combined phenomenon of living nature; and that he would infinitely prefer a life in one of our loneliest log-houses to a barrack-residence of absolute equality, stifling his own individuality and that of every one of his fellow-citizens, however brilliant that barrack might be furnished.⁶ But whether these are the views of the writer or not, is of little importance. The truth remains the same, that the difference pointed out by him exists between the two modes of liberty, that they differ widely, and that it behooves every sincere friend of liberty to reflect maturely on the subject and to come to clear results; especially on the European continent, where liberty is in a nascent state, and is of course exposed to be seriously injured in the tender age of her infancy; while a closer geographical connection with France often leads to the adoption of measures and views peculiar to that country, when no intrinsic reason for doing so exists. The European continental countries have had their periods of absorbing and life-destroying centralization. The principles of our liberty, therefore, are peculiarly necessary to the people of the European continent. Many of them seem to fall into the same unfortunate delusion of expecting everything from *organization* by public power.

-- Francis Lieber, Miscellaneous Writings, vol. 2: Contributions to Political Science. Philadelphia: J.B. Lippincott and Company, 1880.

FRANCIS LIEBER: ANGLICAN AND GALLICAN LIBERTY

- A. THE IDEA OF LIBERTY: UNRESTRAINEDNESS OF ACTION (371-73)
1. **Civil Liberty** Is Relative
 - a. Definition: "The highest amount of that untrammelled and well-guaranteed action or absence of interference which is compatible with a social state and with the objects of a government established to obtain, by united energy, that which is considered essential to each member, but cannot, or ought not, [to] be obtained by individual exertion."
 2. The Idea of Civil Liberty Varies at Various Stages of Civilization Relative to What Views Men May Take of What Is Essential to Man
 - a. Ancient Liberty: Man in His Highest Phase Viewed as a Citizen, and Is Only Man in the True Sense as a **Member of the State**
 - b. Christian and Modern Liberty: **Individual** Is the Highest Object and the State, Law, and Government Are Still But a Means to Obtain the Yet Higher Objects of Humanity

⁶ The writer is no admirer of the feudal ages. He has repeatedly given his views of that period, the essential principles of which with its graduated allegiance are wholly unfit for our nobler freedom. Whenever he has spoken of individual freedom in this paper, he has meant individual independence within *nationalized* societies, under the protection of broad, wide, organic, pervading civil liberty—the very opposite to medieval spitefulness, arrogation, lawlessness, unnational and unsocial liberty.

3. Institutions that Serve Liberty
 - a. Aristotle's Politics
 - c. Agreement of European and Americans upon the Political Principles and Measures Necessary for the Establishment or Perpetuation of Liberty
4. Modern Liberty Is Guaranteed Chiefly against Public Power
- B. MODERN CIVIL LIBERTIES (373-76)
 1. Public and Private **Communication**
 2. **Sovereignty** of the People to Adopt or Supplement a Government
 3. Full Protection of Person through **Due Process of Law**
 4. Free Choice of Residence and **Right of Migration**
 5. Liberty of **Worship and Conscience**
 6. Protection of **Free Production and Exchange; No Taxation without Consent**
 7. Submission Only to Lawful Authority; Perfect Right of Resisting Unlawful Demands [**Civil Disobedience**]
 8. Submission Only to Laws that **Public Opinion** Has Gathered, Settled, Mutually Modified, and Passed into Public Will
 9. Security against Dictation by Power
 10. Popular Control over Public Funds
 11. Right of Peaceable **Assembly and Petition**
 12. Trial by Jury and Right to Participate in the Administration of Justice
 13. Trial Only by Common Courts Established by Law
 14. Penal Trials Hedged in by Due Process Protections; Right to Counsel
 15. **Right of Association**
 16. Political Equality; Absence of Class Privileges
 17. Protection of Lawful Opposition and Minorities
 18. **Freedom of Information** or Publicity Concerning Government Actions
 19. Right of Citizens to **Bear Arms**
 20. Civilian Control of the Army through Law and Short-Term Appropriations; Mutiny-Bill Principle
 21. **Local Self-Government** [cf. Sphere Sovereignty, Principle of Subsidiarity]
 22. Supremacy of Law; No Power of Dispensation
 23. **Judicial Review** in Case of a Written Constitution; Government by Parties
 24. Individual Responsibility (and Accountability) of Public Officers [cf. Nuremberg trials]
 25. Power of Making War and Peace Controlled by the National Sense (Public Opinion)
 26. **Independent Judiciary** and Independence of the Law (Rule of Law)
 27. Protection of Aliens
 28. Common Law and the Principle of the Precedent
 29. Guarantee of These Rights in a **Fundamental Law Superior to Government**
 30. Summary: Guarantees of the Security of Individual Life, Liberty, and Property, the Security of Society against the Abuse of Public Power, and the Means of Translating Public Opinion into Public Will
 31. **Medieval vs. Modern Liberty**: "In the Middle Ages, governments chartered liberty; in our times, the people, or popular liberty, charters governments."
 - a. Contests that Erupt Wherever Modern Liberty Is Established (footnote):
 - 1) General Warrants Issued by the Executive
 - 2) Rule by Executive Proclamation [Great case of Impositions, 1604]
 - 3) Independence of Armies from Popular Control
 - 4) Taxation without Popular Consent
 - 5) Extraordinary Courts and Commissions
 - 6) Freedom of Press, Discussion, and Opposition Suppressed
- C. THE ANGLICAN SCHOOL (377-80)
 1. **Anglican Liberty**: Distinguished by a Tendency to Fortify Individual Independence and by a Feeling of *Self-Reliance*
 - a. Individuality Is Almost Annihilated in Absolutism
 - b. The Highest Degree of Freedom (in the Anglican View) Brings Out the Individuality in Every One

2. Great Aim of **Anglican Liberty**: Independence in the Highest Degree Compatible with Safety and Broad National Guarantees of Liberty
 3. Anglican Peoples Have Repeatedly Avoided the Deplorable Absorbing Concentration of Power Characteristic of the Continental Systems
 - a. Common Law Maxims Distinguished Favorably from the Civil Law
 4. Liberty Consists in a Proper Limitation of Public Power
 - a. Balancing of Order and a Law-Abiding Spirit
 - b. High Use of the Right of Association
 - c. Statism Rejected: Government Is Not the Educator, Leader, or Organizer of Society [cf. Budziszewski on Inculcation]
 - d. [On the Other Hand: The Anglican School Has No Idea of a Fixed Constitution]
 5. Effects
 - a. **Institutional Liberty** Based on Common Law and Precedent as Opposed to Positive Law or Prerogative
 - b. Liberty Consists in Rights Rather than a Direct Share in Government; the Latter Is Sought as a Security for the Former
 - c. Liberty Produces Variety Rather than the Monotony of Equality or Uniformity
 - d. Politics Is Less Likely to Be Mixed Up with Social Matters
 6. The Characteristic Extreme (Its Fanaticism, Caricature, or Extravagance)
 - a. Anglican Individualism May Lead to Selfish Isolation and Heartless Egotism
 - 1) **Utilitarianism** as Taught by Some
 7. Patriotism and Devotion to the Public
 - a. Nowhere Is Shown So Much Public Spirit
 - b. People Must *Rely on Themselves*, Not Upon the Public Power and Therefore Feel They Ought to Help Each Other and Depend on Their Own United Action
[Voluntary Principle]
- D. ANGLICAN VIEW OF THE FRENCH DEVICE: LIBERTY, EQUALITY, FRATERNITY (380-81)
1. Liberty Is the Breath of Conscious Man, Aspired by All
 2. Equality
 - a. As the Absence of Privilege, Equality is Comprehended within the Term "Liberty"
 - b. If It Means Social Uniformity [Identitarianism], It Is Characteristic of Absolutism
 - c. If It Means Unrestrainedness, It Implies Variety
 - d. Democratic Absolutism as Exhibited in Ancient Athens
 - e. Diversity Is the Law of All Organic Life
 3. Fraternity: The Divine Principle of All Social Existence
 - a. It Is Not Necessarily Connected with Liberty
- E. GALLICAN LIBERTY (382-84)
1. England: Nobility Assimilated Itself with the People at an Early Period
 2. All Other Countries: Nobility Remained Selfish, Oppressive, Rebellious
 - a. Their Power Broken in France by Absolute Monarchs
 - b. Barons Converted into *Servile Courtiers*
 - c. Consequence: Louis XIV Created a System of Such **Absorbing Centralization** that He Left France without Independent Institutions, and without Money, or Morality in the Leading Classes
 3. Such Concentration, When Coupled with the Idea of Liberty, Can Produce No Other Idea than Equality
 - a. Effectively, This Means the Exclusive Sway of a Certain Class (Now Sought by the Working Class: the *Ouvriers*)
 4. **Gallican Liberty** Is Sought in the Government
 - a. Necessary Consequences of this View
 - 1) The Highest Degree of Interference by Public Power
 - 2) [What Karl Marx Called the Dictatorship of the Proletariat]
 5. Lack of Self-Reliance
 - a. Louis Blanc: Plan for the Organization of Labor [cf. Bastiat on Blanc]
- F. ANGLICAN AND GALLICAN LIBERTY DISTINGUISHED (384-87)
1. Anglican: Initiative and Implementation Undertaken by the People

2. Gallican: Liberty Begins with Government and Descends to People
 - a. Focus on Solidarity: Caricature of French Liberty [cf. General Will]
 - 1) Consequence: A Spartan Republic that Destroys the Family
 3. Gallican Liberty Emphasizes Organization and Fresh Starts; Anglican Liberty Emphasizes Development
 4. Anglican Liberty Produces Variety; Gallican Liberty Demands Uniformity
 5. England and America: Private Enterprise; France: Nationalization of Railroads
 5. Anglican Liberty: Political Change Intended to Protect Changes Society Works out for Itself; Gallican Liberty: Social Changes Are Organized by the Government
 6. Enthusiasm of the French Is No Substitute for Individualism; Durability Requires **Institutions** [Hence, Institutional Liberty]
 8. The Institution-Building of the Romans and English Contrasted with the Evanescent Brilliance of the Greeks and French
- G. SUMMARY (387-88)

Review

distinguish between ancient and modern views of liberty greatest danger that threatens citizen
 great effects of Anglican Liberty University contests that erupt wherever modern liberty is established
 summary of principles and institutions of Liberty University effects of Anglican liberty
 characteristics of Gallican liberty and differences with Anglican liberty solidarity
 extreme forms of each type