

8-2017

## Francis Lieber: Anglican and Gallican Liberty Study Guide, c. 1999

Steven A. Samson

*Liberty University*, [ssamson@liberty.edu](mailto:ssamson@liberty.edu)

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### Recommended Citation

Samson, Steven A., "Francis Lieber: Anglican and Gallican Liberty Study Guide, c. 1999" (2017). *Faculty Publications and Presentations*. 511.

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# FRANCIS LIEBER: ANGLICAN AND GALLICAN LIBERTY STUDY GUIDE, c. 1999 Steven Alan Samson

## Outline

- 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."
  1. 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
  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
  6. Anglican Liberty: Political Change Intended to Protect Changes Society Works out for Itself; Gallican Liberty: Social Changes Are Organized by the Government
  7. 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