

## Dr. FRANCIS LIEBER

Francis Lieber, born Franz, was the tenth of 12 children of an ironware dealer in Berlin, the capital of the Kingdom of Prussia. Growing up in the era of the Napoleonic wars, the boy watched with dismay as Napoleon's troops entered Berlin in 1806. At about age 16, lying about his age, he volunteered in the Prussian Army and fought against Napoleon's forces during the Waterloo campaign.<sup>1</sup> He was severely wounded in the neck and chest and left for dead.

At age 19, he was arrested and detained for four months as a liberal nationalist opponent to Prussia's existing political system. He was subsequently barred from most German universities and government employment. Despite harassment by the authorities, he received a Ph.D. degree in mathematics at the University of Jena. He then took part briefly in Greece's struggle for independence from the Ottoman Empire, recording his experiences in "Journal in Greece" (1823). Disillusioned by that struggle, he became a tutor in Rome in the household of the Prussian ambassador and eminent historian Barthold G. Niebuhr. Through Niebuhr, he met other German intellectual luminaries, including the historian Leopold von Ranke and the brothers Alexander and Wilhelm von Humboldt.

After his return to Germany and another imprisonment as an "enemy of the state," Lieber left for London, where he met and married his German wife Matilda, before emigrating at age 28 to Boston. There he sought unsuccessfully to introduce into the American school scene German educational innovations involving gymnastics and other recreational sports. In a much more successful venture, he compiled over five years the *Encyclopaedia Americana*, a work inspired by the famous 12-volume German encyclopedia by Brockhaus. Lieber's 13-volume encyclopedia, which eventually sold more than one hundred thousand copies, became a fixture in well-to-do U.S. households, including those of presidents Jackson and Lincoln. In 1832, the year the final volume was published, Lieber, self-styled "publicist" (a word he coined), became an American citizen.

In his late 30s, he achieved his ambition of becoming a professor, first joining the faculty of what is now the University of South Carolina. During his two-decade tenure there, he "helped lay the foundations of academic political science in America."<sup>2</sup> His prolific academic writings included *On Civil Liberty and Self Government* (1853), a two-volume bestseller. Widely adopted as a standard college textbook, the book saw eight printings, the last one in 1911, forty years after his death.

Despite his substantial national intellectual reputation, Lieber was a political and cultural outsider in South Carolina and found his opportunities there limited. He disparaged what he perceived as the state's anti-intellectualism and rigid religiosity. More crucially, he felt strong antipathy toward the institution of slavery and held anti-secessionist views. In 1857,

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<sup>1</sup>John Catalano, *Francis Lieber. Hermenutics and Practical Reason* (Lanham, MD: University Press of America. 2000), 2.

<sup>2</sup>Steven A. Samson, "Francis Lieber on the Sources of Civil Liberty," *Humanitas* IX, no. 2, 1996, <http://www.nhinet.org/samson.htm>.

as North–South tensions grew in the nation, he accepted a professorship in history and political science at Columbia College, the future Columbia University, and later a position in Columbia Law School.

When the Civil War broke out, Lieber was already lecturing on constitutional questions relating to the civilized conduct of hostilities in war. The Lincoln administration needed to provide guidance to Union officers on various conundrums posed by the nature of the war as a civil conflict. A vexing question, for example, was how to accord individual captured Confederate fighters the status and treatment of legitimate combatants, without recognizing the legitimacy of the Confederacy as a separate sovereign state. Most challenging of all was the question of the status of slaves in the war. The prevailing American view at the time was that freeing an enemy’s slaves was against the rules of civilized warfare, on the grounds that such a liberation constituted a confiscation of civilian property. Arming freed or fugitive slaves was likewise anathema.

General Henry Halleck, general-in-chief of the Union armies, called upon Lieber and a committee of four generals to tackle such questions in a manual that addressed what constituted permissible orders and acceptable conduct in war. The resulting Lieber Code or Lieber Instructions—the “Old Hundred” as Lieber came to call it—consisted of 157 articles written by Lieber on such topics as prisoner exchange, proscribed weapons, and the treatment of irregular fighters, prisoners of war, spies, and civilians. On the question of fugitive slaves of seceded states, he was unequivocal in arguing that they were automatically free if they came within the jurisdiction of the Union army, and, if captured as fighters, deserved the same humanitarian treatment as other prisoners of war. His code was quickly distributed to commanders in the field.

Lieber had a direct personal stake in questions concerning humanitarian constraints in war, given that all of his three sons were in uniform, two on the Union side, and one, Oscar, on the Confederate side. Oscar, the eldest, died fighting for the South, while Hamilton lost an arm. Only Norman, despite close calls in battle, escaped unscathed.

In the Civil War’s aftermath, Francis Lieber remained involved in public service. He organized for the War Department the archives of captured Confederate records, assisted by his son Norman. The elder Lieber was also active internationally in promoting his principles on humanitarian limits in war. His code served as a model for a number of national codification projects in Europe, and was the basis for deliberations for the second and fourth Hague Conventions in 1899 and 1907, as well as an influence on the later Geneva Conventions.

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