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THE SERVICE OF FRANCIS LIEBER TO POLITICAL SCIENCE AND INTERNATIONAL LAW.

FRANCIS LIEBER first attained his scientific maturity in America, the land of his adoption. His most important works — “Political Ethics,” “Civil Liberty,” and “Instructions for the Government of Armies of the United States in the Field” — had their origin in America, and were first written in English. This was likewise the case with his numerous and able minor treatises. In so far, then, Lieber belongs to the United States of America, and has claim to a high rank among American scholars and authors.

But he was born in Berlin, and obtained his scientific training and a large part of his intellectual wealth at German schools and universities, and in the closest intercourse with representatives of German science. In so far, then, the German nation has also a share in the merits and fame of the son whom she bore and educated.

The stormy time of Lieber's youth was passed in a period when, in Germany, two opposing schools of law and political science stood over against one another; on the one side the older and so-called Philosophical School, advocating a law of Nature, and on the other the so-called Historical School. The latter charged the former with disregarding the safe and solid ground of historical facts and relations, with soaring aloft to the clouds in flights of abstract thought, and with pursuing dreamy ideas without ever being able to realize them. The philosophical school, on the other hand, blamed the historical school for turning its thoughts entirely towards the past, for yielding slavish obedience to the power of tradition, for not tolerating progress or improvement, and for being destitute of ideas and genius. If the philosophical method was suspected of revolutionary tendencies, the historical method, on the contrary, had the reputation of being reactionary.

It is characteristic of Lieber, that, in himself, he early triumphed over these opposing tendencies. He was of a decidedly ideal nature. His mind delighted in philosophic contemplation from the heights of human consciousness. In his youth, enthusiasm for national inde-

pendence and the liberties of the people had brought him into dangerous conflict with a meddling and stupid police, and allured him into that philhellenic wild-goose chase to Greece. Actual experience in life toned him down somewhat, but by no means extinguished his love of ideal things. He never lost sight of the highest goal of human destiny. The harmonious development of all moral and intellectual powers, which is the highest kind of liberty, appeared to him the appointed task of individual man and of humanity. All of Lieber's writings are warm and glowing with noble ideas concerning the improvement and development of our race. By a kind of predilection he draws his arguments from the loftiest principles of divinely-created human nature and divinely-appointed human destiny. The philosophic, ideal tendencies of his thoughts and aspirations stand everywhere boldly forth. He is a *Liberal* both as a man and a scholar.

But he was in no wise a follower of Rousseau, and by no means captivated with those airy systems of the philosophical school in which unwary and unpractical men had allowed themselves to be caught, like flies in cobwebs, by meshes spun out according to mathematical rules. He had brought along from home and school too good a satchel filled with positive knowledge. He had made too many and too thorough studies in the actual history of nations, and not in vain had been his years of daily intercourse with Niebuhr, — a leader in the historical school, who could hardly be charged with a lack of ideas or of genius. Lieber had also suffered various painful experiences, which made him keenly sensible of the power which dwells in historic institutions and in the established order. But, above all, in America there dawned upon him a full consciousness of the hard realities of life and the inexpugnable power of facts. Here, better than in Europe, he learned to apply the standard of feasibility and of cautious, calculating experience. On this account all his writings teem with historical proofs and precedents and with useful observations. He knew well the value of hard common-sense, and he could harmonize with it his own practical understanding, thus rendering the latter approved. In all these respects he employed the historical method with great advantage.

The settlement of that oldtime conflict of schools and the union of the philosophical and historical methods, in contrast to the dangerous one-sidedness of either of the two, was a mark of great progress effected gradually and for the most part since 1840 in the jurisprudence and political science of Germany, — somewhat later, however, in Italy.

Lieber belongs to the first representatives of this peaceful alliance, although, indeed, it had been tried by the best politicians long before, — by Aristotle and by Cicero, and recommended by Bacon.

Lieber especially emphasizes in his writings the *moral* side of civil society. He is always inclined to associate *right* and *duty*; not in the sense that a man who has simply a duty stands over against the man who has simply a right, but in the sense that *whoever possesses a right has also a duty to exercise*. It is one of the merits of Rudolf Gneist to have been the first in Germany to advocate and decidedly to promote this idea of the obligatory character of civil right, — “civil rights and civil duties.” But even before Gneist, Lieber, although in a somewhat different sense, had stoutly maintained that duty is a necessary factor in civil society. To Gneist duty appears to be a necessary quality, a characteristic of civil right, and, in so far, duty is *legal obligation* (*rechtspflicht*). But according to Lieber duty is different from right; the former is *moral* obligation, not legal obligation. For this reason duty transcends the limits of the legal order, although it is efficacious even within those limits. Duty has a broader basis in the nature of man, which is not governed entirely by man or legally regulated in all lines of its activity. Conscience still urges to the exercise of duty when the laws are silent, and even in political conduct we continue to distinguish between good and evil after the law has ceased to discriminate. For example, an executive officer or a leader in party politics may make a bad use of a legal right which is allowed him by the Constitution, and, again, a patriotic citizen may render his country a greater service than the law requires of him. Lieber, in his manual of “Political Ethics,” has laid especial stress upon the immeasurable importance of this moral element in civil life, and he has written a code of civil ethics which is of service at once to science and to morals: to science, because he has filled a gap in the branch of politics; to morals, because he has encouraged every noble aspiration and every political virtue while manfully combating baseness, even though it vaunt itself in the high places and be marked as holy authority.

Lieber knew that the civil order rests upon the broader and deeper foundation of the moral order, and that the former must sink in ruins if this foundation be destroyed. While showing the connection between the two he follows the natural inclination of the German to consider, from an ethical stand-point, the world and its progress, and to point out their moral worth. The German is fond of moralizing,

but it is difficult for him to view things from a political stand-point. Lieber brought to America this German fondness for moralizing, but he also acquired a political cast of thought which he developed in America. For these reasons his writings possess a great value for Germans as well as for Americans. Our author represents both nationalities, supplies for both their peculiar wants and defects of education, and enriches each with the peculiar wealth of the other.

Lieber does not always distinguish sharply between law and morals in the narrow sense. Sometimes a moral right or an ethical demand appears to him like a law. For example, when he is discussing the great and essentially moral force, which expresses itself in political life as public opinion, he represents the latter as an expression of sovereignty, — that is, as public law ; which is certainly not the case. True it is that no one, not even a legitimate king, can permanently withstand the might of public opinion ; and true it is that the latter, if it holds constantly and firmly to a certain course, will finally bring about changes in the Constitution itself. And just as the overwhelming power of victory, in a war between States, decides the fate of nations, so the peaceful but ever-growing moral power of public opinion works on until at last it becomes irresistible.¹ When the mind and the heart of the people are fully changed, then becomes inevitable a transformation of the State itself, — which is simply a body for the soul of the people to dwell in. But these cases are no operations of sovereignty, no expressions of the supremacy of State ; but rather are they radical changes in the conditions and relations upon which the State is founded, or in the situation of its people. We can appreciate the moral worth of public opinion, and we should not fail to regard it politically ; but we ought never to stamp it as law.

Lieber's work on "Civil Liberty" is quite in accordance with English and American ideas. And it was on this account, perhaps, that the work was translated into German by Franz Mittermaier, and has become better known in Germany than the "Political Ethics." Representative government and self-government are the great works of the English and American peoples. The English have produced representative monarchy with parliamentary legislation and parliamentary government ; the Americans have produced the representative republic. We Europeans upon the Continent recognized, in our turn, that

¹ The latest and best discussion of the subject of public opinion is to be found in the article by Holtzendorff (also a friend of Lieber), which was published by the Faculty of Law at Munich on the occasion of my doctor's Jubilee, August, 1879.

in representative government alone lies the hoped-for union between civil order and popular liberty. We found ourselves obliged, therefore, to become students of English and American institutions, although we gradually came to the conviction that mere imitation would be unsuitable and unworthy, while an exact reproduction would be utterly impossible. All the more welcome, therefore, were the results which Lieber gave us of his own experience and personal observation with regard to the workings of representative government. In his studies concerning the nature of liberty Lieber again, by a sort of preference, discusses the safeguards which Anglo-American common law and statute law have set up and established for the defence of individual freedom against abuse of power.

The "Instructions for the Government of Armies of the United States in the Field" were drawn up by Lieber at the instance of President Lincoln, and formed the first codification of International Articles of War (*kriegsvölkerrecht*). This was a work of great moment in the history of international law and of civilization. Throughout this also we see the stamp of Lieber's peculiar genius. His legal injunctions rest upon the foundation of moral precepts. The former are not always sharply distinguished from moral injunctions, but nevertheless through a union with the same are ennobled and exalted. Everywhere reigns in this body of law the spirit of humanity, which spirit recognizes as fellow-beings with lawful rights our very enemies, and which forbids our visiting upon them unnecessary injury, cruelty, or destruction. But at the same time our legislator remains fully aware that in time of war it is absolutely necessary to provide for the safety of armies and for the successful conduct of a campaign; that to those engaged in it the harshest measures and most reckless exactions cannot be denied; and that tender-hearted sentimentality is here all the more out of place, because the greater the energy employed in carrying on the war, the sooner will it be brought to an end and the normal condition of peace restored.

These "Instructions" prepared by Lieber prompted me to draw up, after his model, first, the laws of war, and then in general the law of nations, in the form of a code or law-book, which should express the present state of the legal consciousness of civilized people. Lieber in his correspondence with me had strongly urged that I should do this, and he lent me continual encouragement.

The intimate personal connection in which I stood with Lieber in his declining years, although indeed through interchange of letters

and not through meetings face to face, was for me a constant stimulus and source of satisfaction. This relation with Lieber was animated and strengthened by great events of world-wide interest: first of all, the war for the American Union from 1861 to 1865; then the war between Austria and Prussia in 1866; and finally the Franco-Prussian war. From 1860 to 1870, Francis Lieber in New York, Edward Laboulaye in Paris, and I in Heidelberg, formed what Lieber used to call "a scientific clover-leaf,"—in which three men, devoting themselves especially to political science, and at the same time uniting the historical and philosophical methods, combining theory with practical politics, and belonging to three different nationalities, to three States and to three peoples, found themselves growing together by ties of common sympathy, and thus, figuratively speaking, representing also the community of Anglo-American, French, and German culture and science. The personal tie, indeed, is now, alas! broken. Lieber is dead, Laboulaye had already virtually separated from us, for he could not overcome the bitterness caused by his feelings and experience during the Franco-Prussian war. But that community of thought, science, and endeavor which we represented for three peoples and for three civilizations is not broken up, but will broaden and deepen and become more fruitful, as surely as the peculiar spirit and individual forms of nationality, existing of their own right, find their true harmony and highest end in the development of humanity.

Lieber had great influence, I may add, in founding the *Institut de Droit International*, which was started in Ghent in 1873, and forms a permanent alliance of leading international jurists from all civilized nations, for the purpose of working harmoniously together, and thus serving as an organ for the legal consciousness of the civilized world. Lieber was the first to propose and to encourage the idea of professional jurists of all nations thus coming together for consultation and seeking to establish a common understanding. From this impulse proceeded Rolin-Jacquemyns's circular letter, drawn up in Ghent, calling together a number of men eminent for their learning. This latter proposal to found a permanent Academy for *International Law* met with general acceptance; but it was merely a further development of the original idea of Lieber, which was at the bottom of the whole scheme. His notion was now only approved, and the efficiency of the association was thus assured for the future.

J. C. BLUNTSCHLI.