

**Lieber, Francis** (1798-1872), author and professor. Born in Berlin, Lieber served in the Prussian Army until he was wounded near Waterloo in 1815. He earned a doctorate at Halle in 1820 and was twice imprisoned for his radicalism. Emigrating, he reached Boston in 1827. First employed to manage a gymnasium, he met John Quincy Adams who came to swim. Impressed, the President introduced Lieber on Beacon Hill. In 1828, he published a book on penology making novel use of empiricism. He then edited the original Encyclopedia Americana, recruiting many eminent authors as uncompensated contributors. He was Alexis de Tocqueville's principal informant in the study leading to publication of Democracy in America.

In 1835, Lieber was appointed as professor at the College of South Carolina. There, he wrote a series of books on American law in its relation to democracy. In 1838-1839, he published three volumes, two on Political Ethics and one on Legal and Political Hermeneutics. These works applied ideas developed by Protestant theorists, most notably Immanuel Kant, to fundamental issues of self-government. He wrote in reaction against the uninhibited ideas about law prevailing in the Jacksonian era. He defined the appropriate limits of ambition, friendship, popularity, ideology, religion, patriotic loyalty, education, suffrage, the media, and the habit of obedience to law in the conduct of representative government. He affirmed as a categorical imperative that right and duty are interdependent: individual rights implying corresponding individual duties. He was much annoyed that Karl Marx appropriated his slogan: "no rights, no duties; no duties, no rights." Chancellor Kent and Justice Story wrote enthusiastic reviews of his work.

In 1841, Lieber published Property and Labour, an economic analysis of private law celebrating in moderation the marketplace as a system of wealth distribution. This

volume was also well received. Enthusiasm for his work reached Europe. In 1844, the King of Prussia pardoned Lieber and invited him to become a royal consultant. He served for a year and returned to South Carolina to write Civil Liberty and Self-Government. This work compactly covered most of American constitutional law comparatively and historically and was used as a text in many colleges.

In 1858, Lieber became the founding spirit of the law school re-established at Columbia University. He selected Theodore Dwight as his colleague to teach “municipal” or private law while he taught public law. Among his students were John W. Burgess, his successor at Columbia, and Frank Goodnow, later president of Johns Hopkins University and teacher to Ernst Freund, the founding spirit of the University of Chicago Law School. All these scholars of public law practiced Lieber’s comparative approach.

In 1863, as consultant to the War Department, Lieber wrote a military order governing conduct of soldiers in occupied territory. The Prussian Army adopted it in 1871 and, by international agreement in 1899, it became the Law of War. In 1913, Elihu Root designated Lieber the “patron saint of American international law.” Lieber joined with Burgess and Goodnow in 1865 to found the American Social Science Association, an institution devoted to using law informed by social science to reform American society. He was also regarded as a founding spirit of political science.

Posthumous editions of Lieber’s Political Ethics, Civil Liberty and Hermeneutics books as well as two volumes of his miscellaneous writings, and even many of his letters, were published. This late-century revival was a reaction to the technocratization of the legal profession increasingly evident after 1870. Christopher Columbus Langdell and

others were then seeking to establish law as a technocratic and self-sufficient professional discipline. To the Lieber revivalists, words written in the 1830s in opposition to free-wheeling, politicized law were also useful to oppose the constricted, apolitical law celebrated after 1870.

Much of the work of the Legal Realists of the 1920s, and of others seeking to unite law with other academic disciplines, could have drawn on Lieber's writings, but that did not happen. Generally treated in the twentieth century as the startling nineteenth century discovery of the proper sources of professional insight into law was Oliver Wendell Holmes' Common Law, a work published in 1881 that made no reference to Lieber.

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