

Francis Lieber's Theory of Institutional Liberty

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Francis Lieber, a German-American educator and publicist, helped lay the foundations of academic political science in the United States during a career that spanned the middle third of the nineteenth century (1827-1872). Unaccountably neglected today, Lieber is nevertheless generally acknowledged to have been the most prominent political scientist of his generation. His most important single contribution to the literature of political science is considered to be his theory of institutional liberty, which links civil liberty with self-government. A sketch of Lieber's life and work will be followed by a discussion of his ideas about the relationship between nationalism, liberty, and self-government.

A Biographical Sketch

Franz (Francis) Lieber was born on March 18, 1798 in Berlin into a once prosperous business family that had suffered reverses during the political upheavals in Germany spawned by the French Revolution.¹ Forever etched into the young boy's memory was the shame he felt at his country's defeat in the Battle of Jena (1806), followed by the parade of Napoleon's troops outside his window on Breite Strasse in Berlin, where later, on his 50th birthday, the opening battle in the Revolution of 1848 would be fought.

At the age of seventeen Franz was severely wounded and left for dead at the Battle of Waterloo. It took him a full year to recover and return home. Afterwards he studied gymnastics under Friederich Ludwig Jahn and joined the *Turnerschaft* movement, where he came under the influence of Friedrich Schleiermacher. Before he resumed his formal studies, Lieber helped compile the official *Turner* songbook.

Lieber was imprisoned for four months in 1819 following the assassination of the playwright and political satirist, August von Kotzebue. Like Jahn, Lieber knew the assassin but was not personally implicated in the crime. The police confiscated his diaries and published some of his most

¹ This account is drawn primarily from Frank Freidel, *Francis Lieber: Nineteenth-Century Liberal* (Baton Rouge, LA, 1947). See also Lewis R. Harley, *Francis Lieber: His Life and Political Philosophy* (New York, [1899] 1970); and Henry A. Pochmann, *German Culture in America: Philosophical and Literary Influences, 1600-1900* (Madison, WI, 1961), 125-27.

strident poems, which served only to provide an ampler forum for the dissemination of his political views.

Following his release, Lieber resumed his studies and sought admission to the University of Berlin in the safe subject of mathematics, but he was rejected by the rector on orders from the police. He lodged a protest with Freiherr von Stein zum Stein, the liberal Minister of Education, who responded by forbidding his admission to any Prussian university.² Lieber then surreptitiously won admission to the University of Jena, which had been declared off limits to Prussian students because it was a center of radical activity.

Lieber matriculated in theology early in April 1820, switched to the liberal arts where he specialized in mathematics, and was granted his Ph.D. diploma after four months. The police cited his acquisition of the Ph.D. as another political offense and kept him under surveillance. But no one questioned the degree's validity. In years to come it would open many doors for him.

The following year Lieber escaped Germany to fight in an early phase of the Greek war for independence (as did Lord Byron and Samuel Gridley Howe), but the experience left him disillusioned and destitute. Lieber left for Italy in the Spring of 1822 and called upon the great liberal historian, Barthold Niebuhr, who was then Prussia's ambassador to Italy. Niebuhr took pity upon the young man, hired him to tutor his son, helped moderate his revolutionary fire, and initiated him into international cultural circles.

The year-long association with Niebuhr had a profound influence on Lieber's intellectual development. One biographer suggests that the Francophobia of Lieber's youth was, if anything, intensified through his association with Niebuhr. But Niebuhr's Anglophilia is even more evident in Lieber's subsequent development and undoubtedly inspired the contrast he later made between Anglican and Gallican liberty.³

Lieber published an account of his experiences in Greece and met both Alexander von Humboldt and the Prussian king during his stay in Rome. Meanwhile, Niebuhr interceded with the king on Lieber's behalf and won a pardon for him. The two men then returned to Germany late the following summer. Even so, Lieber continued to face difficulty and eventually spent more time in prison after refusing to identify his earlier compatriots.

² Lieber's personal experience evidently colored his later view of Stein, as may be seen in the entry on Stein that Lieber wrote for his *Encyclopedia Americana*.

³ Friedel, *op. cit.*, 37-38.

Faced with an uncertain future at home, Lieber emigrated first to England in the Spring of 1826, where he met his future wife Matilda, as well as George Grote, Henry Brougham, and John Stuart Mill. While Lieber was still in England that autumn, his friend Karl (Charles) Follen, a Harvard lecturer, recommended him to a group of Bostonians who wanted to establish a gymnasium. Lieber accepted their offer, sailed to America the following summer, and started his own swimming school. After five years of residence and the beginnings of a family, Lieber was awarded American citizenship in 1832.

In addition to operating a swimming and gymnastics program (1827-29), Lieber edited the *Encyclopedia Americana* (1828-33), then taught at South Carolina College (1835-56), Columbia College (1857-65), and Columbia Law School (1865-72). During the Civil War, he drafted the first code of military conduct for use in land warfare, which was later incorporated into the Hague and Geneva Conventions.⁴ Lieber also carried on an extensive correspondence with a great number of scholars, politicians, and literary figures in Europe and America.⁵

Lieber's work covers a wide range of fields.⁶ His contributions to penology, international law, and higher education have been acknowledged in the standard histories of those fields.⁷ Apart from the *Encyclopedia*

⁴ See Richard Shelly Hartigan, *Lieber's Code and the Law of War* (Chicago, 1983).

⁵ The full list of Lieber's correspondents is a veritable "Who's Who" of the literary, political, and academic leaders of his day. Among his major correspondents were J. K. Bluntschli, Henry Clay, Dorothea Dix, Edward Everett, Hamilton Fish, Simon Greenleaf, Gen. Henry Halleck, Samuel Gridley Howe and his wife, James Kent and his son William, Henry Wadsworth Longfellow and his wife, K. A. J. Mittermaier, William H. Prescott, Joseph Story, Charles Sumner, George Ticknor and his wife, Alexis de Tocqueville, and Andrew Dickson White. For a more comprehensive list, see Charles B. Robson, "Papers of Francis Lieber," *Huntington Library Bulletin*, 3 (February 1933), 135-55.

⁶ Apart from occasional verse, special lectures, topical pamphlets (including pro-Union propaganda), and several treatises, Lieber also published -- in succession -- a study of the Lancastrian system of education; a booklet of German drinking songs; thirteen volumes of his encyclopedia, which was modeled upon Brockhaus's *Konversations-Lexikon*; an introduction to Beaumont and Tocqueville's work on the American penitentiary system; an education plan for Girard College; reminiscences of Barthold Niebuhr; proposals to Congress concerning statistics and an international copyright; remarks on the relation between education and crime; remarks on comparative philology; a study of penal law; a study of the vocal sounds of Laura Bridgman, the blind deafmute; and several essays on nationalism and international law.

⁷ In addition, Lieber's influence on sociology is noted in Albion W. Small, "Fifty Years of Sociology in the United States," *American Journal of Sociology*, 21 (1915-1916), 728-29, note 1; and his place in physical education (along with that of Friedrich Jahn) is considered at length in Fred Eugene Leonard, *A Guide to the History of Physical Education*, 3rd ed., revised by George B. Affleck (Westport, CT), 242-47.

Americana, Lieber's larger works include a popular travelogue, *Letters to a Gentleman in Germany* (1834), reprinted in England as *Stranger in America*, which included an account of his experiences at the Battle of Waterloo; a set of principles for interpretation and construction in law and politics, *Legal and Political Hermeneutics*⁸ (1839); a textbook on political economy, *Essays on Property and Labour* (1841); two political science treatises, the *Manual of Political Ethics* (two volumes: 1838, 1839) and *On Civil Liberty and Self-Government* (1853); a posthumous collection of his shorter writings, *Miscellaneous Writings* (two volumes: 1881); and selections from his letters edited by Thomas Sergeant Perry, *The Life and Letters of Francis Lieber* (1882).

The Character of Lieber's Political Philosophy

Alan Grimes has summarized Lieber's place in American political thought as follows:

The decline of the constitutional and legal approach to an understanding of the nature of the American Union, and the rise of the organic concept of the nation is well illustrated in the writings of Francis Lieber. An immigrant from Germany, Lieber skilfully synthesized the English emphasis on civil liberty and the importance of local political institutions, with the German emphasis on nationalism. Thus Lieber's nationalism was built upon decentralized institutions which in turn helped protect the civil rights of the citizens. It was, Lieber believed, the happy combination of local institutions and national purpose which protected and fostered civil liberty in a modern nation state.⁹

Given Lieber's personal background, it is probably natural that the chief concern of his political philosophy should be how to obtain and perpetuate "real and essential self-government, in the service of liberty."¹⁰ Lieber's later theory of institutional liberty appears to have firm autobiographical roots. The Germany of Lieber's youth was fragmented among several petty kingdoms that subsisted precariously in the shadow of France and Austria. The defeat of Napoleon had simply meant exchanging a French overlord for Austrian hegemony. The kind of liberty and self-government known in

⁸ This work is the subject of James Farr, "Francis Lieber and the Interpretation of American Political Science," *Journal of Politics*, 52 (November 1990), 1027-49.

⁹ Alan Pendleton Grimes, *American Political Thought*, revised ed. (New York, 1960), 283. Grimes draws primarily from Lieber's essay "Nationalism and Internationalism" in volume 2 of Lieber's *Miscellaneous Writings*.

¹⁰ Francis Lieber, *On Civil Liberty and Self-Government*, 3rd ed., revised, ed. Theodore D. Woolsey (Philadelphia, 1877), 300.

England and the United States must have seemed a distant prospect for a young German liberal.

Given these concerns, it is also probably natural that the first of Lieber's two treatises on politics would concentrate on political ethics. As Bernard Brown has noted, Lieber believed that

the problems of politics are primarily ethical and moral. Lieber's concept of morality, like Kant's, is a social one; it derives from the fact that man is a social being. Each individual, because he exists, has valid claims; but the fact that there are other individuals alike in nature and with similar claims creates a social situation and the need for general controls. Because of the existence not only of the individual, but of other individuals, and of a society as well, both right and duties are essential to men in society.¹¹

Another major dimension of Lieber's thought is theological. Repeated references to God, creation, and Christianity sprinkle the *Manual of Political Ethics* and, more casually, *On Civil Liberty and Self-Government*.¹² Lieber certainly belongs among the academic moral philosophers of his period who, according to D. H. Meyer, "played a significant role in the formation of America's public conscience."¹³ He believed that humanity is providentially designed for a higher destiny. It was his firm conclusion that human nature reaches its fullest amplitude of expression in a state of civilized interdependence — in cultural maturity — rather than primitive isolation. Lieber attributed cultural and developmental differences primarily to tractable historical influences. He was wary of invidious racial and biological comparisons.¹⁴

¹¹ Bernard Edward Brown, *American Conservatives: The Political Thought of Francis Lieber and John W. Burgess* (New York, 1951), 28. The reference is to one of Lieber's favorite mottos: 'No Right without its Duties, no Duty without its Rights.'

¹² Lieber's attention to theology not unusual at this time. Theodore Woolsey's *Political Science* (1877) and Elisha Mulford's *The Nation* (1870), show a clear theological orientation. Woolsey, the president of Yale, was much indebted to Lieber's *On Civil Liberty and Self-Government*, which Yale adopted as a textbook in the 1850s. Another political scientist at Yale in the early 1870s, who subsequently adopted scientific naturalism, was the Rev. William Graham Sumner. See George M. Marsden, "God and Man at Yale (1880)," *First Things*, 42 (April 1994), 40. Likewise, John W. Burgess studied theology before he succeeded to the political science chair at Columbia once held by Lieber.

¹³ D. H. Meyer, *The Instructed Conscience: The American National Ethic* (Philadelphia, 1972), vii. Unfortunately, Meyer chose Lieber because his "concerns and approach clearly [differed] from those of the ordinary textbook writers" (147). Lieber used William Paley's work in his own ethics classes.

¹⁴ See C. B. Robson, "Francis Lieber's Nationalism," *Journal of Politics*, 8 (1946), 57-73.

Lieber consciously sought to distinguish his work from the dominant German schools of law and politics, as may be seen in his inaugural address at Columbia in 1858:

There was a time when the greatest sagacity of the historian was believed to consist in deriving events of historic magnitude from insignificant causes or accidents, and when the lovers of progress believed that mankind must forget the past and begin entirely anew. These errors produced in turn their opposites. The so-called historical school sprang up, which seems to believe that nothing can be right but what has been, and that all that has been is therefore right, sacrificing right and justice, freedom, truth, and wisdom at the shrine of Precedent and at the altar of Fact. They forget that in truth theirs is the most revolutionary theory while they consider themselves the conservatives; for what is new to-day will be fact to-morrow, and, according to them, will thus have established its historical right.

Another school has come into existence, spread at this time more widely than the other, and considering itself the philosophical school by way of excellence. I mean those historians who seek the highest work of history in finding out a predetermined type of social development in each state and nation, and in every race, reducing men to instinctive and involuntary beings, and society to nothing better than a bee-hive.¹⁵

In a similar way, Lieber likened both society and the state to living organisms, especially to the animal body, which he called "a republic of action."¹⁶ But in describing his ideal of "hamarchy" (cooperative rule), he avoided the totalitarian implications of the organic model by basing it not, "as it is in so many biological analogies, on the centrally directed nervous and muscular system of the animal, but upon the vital generative power of the disparate 'systems [which] act and produce independently.'"¹⁷

Lieber associated the rise of the nation-state with the development of autonomous institutions. He identified three major characteristics of the development of the modern epoch.¹⁸ First is the national polity or nation state. Second is "the general endeavor to define more clearly, and to extend more widely, human rights and civil liberty."¹⁹ Third, amidst the

¹⁵ Francis Lieber, *Miscellaneous Writings*, vol. 1: *Reminiscences, Addresses, and Essays* (Philadelphia, 1881), 339-40.

¹⁶ Francis Lieber, *Manual of Political Ethics, Designed Chiefly for the Use of Colleges and Students at Law*, Part I (Boston, 1838), 412.

¹⁷ C. B. Robson, "Francis Lieber's Theories of Society, Government, and Liberty," *Journal of Politics*, 4 (1942), 241.

¹⁸ Francis Lieber, *Miscellaneous Writings*, vol. 2: *Contributions to Political Science, Including Lectures on the Constitution of the United States and Other Papers* (Philadelphia, 1881), 225-43.

¹⁹ *ibid.*, 222, 239.

breakdown of universal empires has come the simultaneous flowering of many leading nations under the aegis of international law and "in the bonds of one common moving civilization."²⁰ Still, he believed that "there will be no obliteration of nationalities" in this commonwealth of nations. Internationalization is merely the latest manifestation of an "all-pervading law of interdependence."²¹

Each of these themes converges in Lieber's theory of institutional liberty. The theory itself developed through several stages of its own: the idea of hamarchy in *Manual of Political Ethics* (1838), the contrast between "Anglican Liberty and Gallican Liberty" (1849) in an essay by that title, and, most importantly, the long section on institutional liberty in *On Civil Liberty and Self-Government* (1853).

Nationalism

The character of institutional liberty is easiest to grasp by starting with Lieber's essay on "Nationalism and Internationalism" (1868), where the by now familiar concept was unobtrusively integrated into his theory of nationalism.

A nation is the product of a slow, organic growth that merges the people of a given area into a greater whole:

This institutional and evolutionary emphasis in Lieber led him to discard the contract theory of the state, holding that the state arose from the social necessities of man's being. The nation, in Lieber's conception, was a homogeneous population, in a coherent territory, with a common language, common literature and institutions, possessed of a consciousness of a common destiny. It was this aspect of commonality of culture, of history, of political institutions and of destiny which made a given people in a given place a nation. This organic concept of the nation was certainly far closer to Burke than it was to the contract theorists in America.²²

The role of nationalism in Lieber's thinking appears to have gone through some stages in its own development. In his *Manual of Political Ethics*, Lieber attributed the change between ancient and modern times to six factors:

²⁰. *ibid.*

²¹. *ibid.*, 241-42.

²². Grimes, *op. cit.*, 283-84. In fact, Lieber was critical of Locke's contract theory. He probably owed much more to Montesquieu's idea of the separation of powers and to the influence of Burke on German liberals like Niebuhr and Wilhelm von Humboldt.

1. Christianity;
2. the barbarian conquest of the Roman empire;
3. the increased size and population of states;
4. printing;
5. the increased importance of taxpayer, science, and industry; and
6. the discovery of America.²³

The third and fifth points are especially indicative of the rise of the nation state. Later, he simply acknowledged the importance of the nation in his treatise, *On Civil Liberty and Self-Government*:

How necessary for modern liberty a national representative government is — a representative system comprehending the whole state, and throwing liberty over it broadcast — will appear at once, if we remember that local self-government exists in many Asiatic countries, where, however, there is no union of these many insulated self-governments, and no state self-government, and therefore no liberty. We shall also presently see that where there is only a national representative government without local self-government, there is no liberty as we understand it.²⁴

Lieber's mature views on the subject, then, were only developed in a fragmentary way in his last essays. In an early version of his essay on nationalism, Lieber claimed that "the national polity is the normal type of modern government."

As the city-state [a word coined by Lieber] was the normal type of free communities in antiquity, and as the feudal system was one of the normal types of government in the Middle Ages, so is the national polity the normal type of our own epoch — not indeed centralism.

Large nations have been formed out of the fragmentary peoples on the continent of Europe, England alone dating the blessing of a national polity over a thousand years back; others are in the act of forming; others, already existing, are carrying out more distinctly or establishing more firmly the national elements of their polities.²⁵

The modern nation state represents a marked advance over the "market-republics" of earlier times and the "absorbing centralism and dissolving communism" of Asian and European despotism. But this advance beyond the feudal system of local and class privileges has taken two opposing forms, as summarized by Charles Robson:

²³ *Political Ethics*, I, 431-32.

²⁴ *Civil Liberty*, 168.

²⁵ *Miscellaneous Writings*, II, 225.

In so far as nationalism served to break down isolated groupings and the stratification of the middle ages, to do away with petty territorial obstructions to cultural and economic exchange,... it contributed to the realization of freedom. When it took the form of absolutism and centralization, however, the concept of liberty was distorted and the actuality destroyed.²⁶

Lieber held that "extensive and organized power over large populations does not suffice to make a nation."²⁷ More essential than these is a full, comprehensive development in terms of a unifying ideal.

Despite what Lieber called the "national humiliation and suicide" of the ancient Hebrews "before their national government had fully and comprehensively developed itself," he considered it very significant that "the only monotheistic people, and the people for whom Moses legislated, formed, in the earliest times of history, a nation in the modern sense. The same cannot be said of ancient Egypt."²⁸

Lieber regarded England as the first modern nation and the native land of modern liberty. He dated its origin back to the time of Alfred the Great, its early lawgiver, and maintained that "in her alone liberty and nationality grew apace."²⁹ By contrast, the still incomplete process of creating the Italian and German nations began much later when Dante and Luther each raised his native dialect to the dignity of a national tongue.

Turning to the question whether the early American states were a nation, Lieber argued that neither the accidents of geography nor the (often reprehensible) motives of the crown were determinative. Instead, he emphasized that the American colonists hailed from a country where national institutions were part of their birthright and already displayed considerable expertise in self-government.

Long before the American independence was actually declared, the consciousness of our forming a national entirety was ripening. The Continental congress used the words country and America in its

²⁶ C. B. Robson, "Francis Lieber's Nationalism," *Journal of Politics*, 8 (1946), 63.

²⁷ *Miscellaneous Writings*, II, 229.

²⁸ *ibid.*, 230. Enoch Cobb Wines, whose interests included prison reform, had a similar regard for what he called the Hebrew Republic. See E. C. Wines, *Commentaries on the Laws of the Ancient Hebrews, with an Introductory Essay on Civil Society and Government* (Philadelphia, [1853] 1859). The idea that the Israelites had a republican form of government was not a new one. See, for example, the election sermon of Samuel Langdon preached before the General Court of New Hampshire on June 5, 1788, which is reproduced in Ellis Sandoz, ed. *Political Sermons of the American Founding Era, 1730-1805* (Indianapolis, 1991), 941-67.

²⁹ *ibid.*, 226.

official acts — in resolutions and appointments — before that day of mark, the Fourth of July. The very name Continental congress, Continental army and money, shows that the idea of a national unity was present to the minds of all — at home as well as abroad.³⁰

The fact that a general rather than a specific name was adopted for the country — the “United States of America” or simply “America” — seemed significant to Lieber as well as Orestes Brownson.³¹ But whether the name was distinct or not, “all felt that we were a nation.”³² He concluded, again like Brownson, that the American union predated the Declaration of Independence. Specifically, he held to the view of John Adams that the speech of James Otis against the writs of assistance in 1761 “breathed into this nation the breath of life.”

Thus the American nation was born in a struggle for civil liberty: “all exertions were instinctively national, or in the spirit of a nation to be born.”³³ This American nation was afterward transformed into a national representative republic by the adoption of the Constitution.

The instrument is called a Constitution, not Articles; the word sovereign does not appear once; a national legislature, the members of which vote individually and personally, not by states, and an eminently national and individual executive, in the person of one man, are established, and a portion of the people or of the states (though it must be a large majority) can oblige the smaller portion to adopt amendments to the Constitution. No minority of *sovereigns*, however small, can be made subject to a majority of sovereigns, however large. This single fact would annihilate *sovereignty*. We are a nation. The general government was always called in the early years of our present government, a national government, and rightly so.³⁴

It is this condition of self-government with union, then, that provides a context for evaluating Lieber’s theory of institutional liberty.

³⁰. *ibid.*, 233.

³¹. In the name United States “there are no sovereign people without states, and no states without union, or that are not united states.” At no time were the states independent of each other, in Brownson’s judgment. He held that sovereignty was vested “in the states united, not in the states severally, precisely as we have found the sovereignty of the people is in the people collectively or as a society, not in the people individually ...” Alvan S. Ryan, ed. *The Brownson Reader* (New York, 1955), 77.

³². *Miscellaneous Writings*, II, 234.

³³. *ibid.*, 235.

³⁴. *ibid.*, 237.

Liberty

Lieber opened his 1853 treatise *On Civil Liberty and Self-Government* with words that, following the collapse of the Soviet empire, resonate very strongly once again:

Our age, marked by restless activity in almost all departments of knowledge, and by struggles and aspirations before the unknown, is stamped by no characteristic more deeply than by a desire to establish or extend freedom in the political societies of mankind.³⁵

This is the second characteristic of the modern epoch: a concern to define and extend human rights and civil liberty. With an earnest intensity that seems to burst out of the intersection of history and autobiography, Lieber surveyed the prospect in 1853 and described it as a period of "marked struggle in the progress of civilization" resembling the Reformation in its scope and violence. He invited his readers to accept the task of diffusing civil liberty as the mission assigned their generation.

The love of civil liberty is so leading a motive in our times, that no man who does not understand what civil liberty is, has acquired that self-knowledge without which we do not know where we stand, and are supernumeraries or instinctive followers, rather than conscious, working members of our race, in our day and generation.³⁶

Hundreds of political constitutions had been drafted during the first half of the nineteenth century. However short-lived, they would leave roots "which some day will sprout and prosper." Alluding to the revolutions that had recently convulsed Europe, Lieber remarked that blood "has always flowed before great ideas could settle into actual institutions, or before the yearnings of humanity could become realities."³⁷

The most concentrated expression of Lieber's thought on the subject of civil liberty is found in his essay "Anglican and Gallican Liberty," which was first published in 1849.

Lieber argued that external liberty is an outgrowth of internal freedom. Real freedom is "personal, individual, and relates to the whole being." Liberty is "granted, guaranteed, and, therefore, generally of a public character." It is the political expression of this preexisting moral condition of the people. It is a practical result of flourishing institutions of self-government.

³⁵. *Civil Liberty*, 17.

³⁶. *ibid.*

³⁷. *ibid.*, 18.

In its ultimate sense, freedom is perfect self-determination:

Absolute freedom ... 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.³⁸

Given its relative character, civil liberty is the highest degree of independent action that is compatible with obtaining those essentials that are the proper objects of public power. Since these objects vary, the character 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 this terrestrial life.³⁹

The classical idea of human nature, represented by Aristotle, treated citizenship as man's highest estate. But Lieber believed Aristotle's politics was confounded by his pre-Christian metaphysics. On the positive side, Aristotle regarded the existence of certain institutions as tests as to whether liberty existed in a particular state or not. Even so, neither the Greeks nor the Romans ever succeeded in extending self-government beyond the city-state.

The modern view of man, on the other hand, emphasizes individuality.

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 objects of humanity.⁴⁰

In modern times, "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," although there might be disagreement over some of the particulars. Lieber believed these guarantees

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.⁴¹

³⁸ *Miscellaneous Writings*, II, 371.

³⁹ *ibid.*, 372.

⁴⁰ *ibid.*

But two distinct ideas of modern liberty have evolved, which for the sake of brevity may be described as either centralized or decentralized. Gallican liberty is what Lieber called the kind that is granted by absolute governments, whether the monarchic absolutism of the Bourbon kings and Bonaparte emperors or the democratic absolutism of the French revolutionaries. In either case, the individual is left naked and powerless before the state or the general will.

By contrast, as Charles Robson has noted in his summary of Lieber's views:

England had developed political institutions consisting of a national representative system, a common law presided over by an independent judiciary, and local self-government, which permitted non-political institutions "of all sorts, commercial, religious, cultural, scientific, charitable and industrial" to flourish under the protection but not the control of the national state.⁴²

This Anglican liberty, as Lieber called it, is rooted in the habits and loyalties of long-standing communities. As he defined it in a later work:

What we call Anglican liberty, the guarantees which our race has elaborated, as guarantees of those rights which experience has shown to be the most exposed to the danger of attack by the strongest power in the state, namely, the executive, or as most important to a frame of government which will be least liable to generate these dangers, and also most important to the essential yet weaker branches of government.⁴³

Lieber designated this type of liberty "Anglican" because he viewed it as a development "common to the whole Anglican race ..."⁴⁴ Its guarantees help prevent abuse of the powers exercised by the national government. All this accords with Robson's appraisal of Lieber's nationalist theory of liberty: "This type of nationalism was the model for modern states, for in it the liberty of the individual could be realized and the loyalty of free men could be enlisted."⁴⁵

Lieber's reflections on the differences between the decentralized, highly institutionalized Anglican liberty and the centralized, largely unmediated Gallican liberty of Napoleonic France were deepened by first-hand observation of the aftermath of the revolutions which broke out early in

⁴¹ *ibid.*, 373.

⁴² Robson, "Nationalism," 63-64.

⁴³ *Civil Liberty*, 53-54.

⁴⁴ *ibid.*, 55.

⁴⁵ Robson, "Nationalism," 64.

1848. When the news arrived one spring day, an agitated Professor Lieber dismissed his classes early. He waited impatiently for the end of the school year, then left for Germany late in June. But all his hopes for a liberal regime had already been dashed by the time he arrived in July.

Much as Lieber wished to see the establishment of Anglo-American institutions in his homeland, he realized that "they presuppose a people well skilled, trained and formed in the politics of liberty."⁴⁶ Upon leaving Germany for the last time, he sadly wrote his friend Mittermaier in Heidelberg: "I take with me the clear conviction, that Germany cannot be great, strong or happy with her many princes. She could be a great country if united under one government ..."⁴⁷

Self-Government

At the time Lieber wrote *On Civil Liberty and Self-Government* (1853) the word "self-government" had not yet come into general use. Although the word is a literal translation of the Greek *autonomeia* [autonomy], Lieber gave it a much wider application than did the Greeks, for whom "it meant in reality independence upon other states, a non-colonial, non-provincial state of things."⁴⁸ By contrast to the Greeks, who were faced outwardly by foreign states, the English term was first adopted by theologians and used in an inward, moral sense. "Self-government, the same word [as *autonomeia*], has acquired with ourselves, chiefly or exclusively, a domestic meaning, facing the relations in which the individual and home institutions stand to the state which comprehends them."⁴⁹ It suggests an internal or moral autonomy or independence from others, including other institutions.

⁴⁶. The context of Lieber's letter to Matilda (August 8, 1848) indicates that he was still hopeful: "No revolution in history was ever so difficult as the German. It is a great misfortune, but natural according to the anteceding circumstances, that an overwhelming majority of the continental people look infinitely more toward France than England. England is shunned as aristocratic, and the whole drift of things here is pre-eminently democratic. This has produced one evil: in the Parliamentary proceedings they have adopted and are daily adopting the French Règlements, instead of the English or American wise rules. However, I doubt very much whether, under all the existing circumstances, the English rules could have been adopted, or if they would have worked well. *They presuppose a people well skilled, trained, and formed in the politics of liberty.* Yet I must add that the United States is universally mentioned with respect and admiration. This does my heart good" (emphasis added). Thomas Sergeant Perry, ed. *The Life and Letters of Francis Lieber* (Boston, 1882), 218-19.

⁴⁷. Freidel, *op. cit.*, 248.

⁴⁸. *Civil Liberty*, 39 note.

⁴⁹. *ibid.*, 39 note.

The concept of internal self-government is clearly anticipated in Lieber's *Manual of Political Ethics*. Lacking an English word for it, Lieber simply coined one, hamarchy, which he derived "from ama, at the same time, jointly, cooperatingly, and *archein*, to rule."⁵⁰ He began by defining hamarchy in contrast with "autarchy."

I call autarchy that state in which public power, whole and entire, unmitigated and unmodified, rests somewhere, be this in the hands of a monarch, or the people, or an aristocracy, it matters not for our division. Provided there be absolute power, or absolutism, a power which dictates and executes, which is direct and positive, we call the polity an autarchy. As the word autocracy has already its distinct meaning, namely, that of absolute monarchy, I was obliged to resort to another, which would comprehend the absolute monarchy as well as absolute democracy or aristocracy. The democratic autarchy stands, therefore, in the same relation to a democracy in general, as the absolute monarchy or autocracy stands to monarchy in general.⁵¹

Lieber deliberately drew his analogies and language — "power," "direct," "positive" — from physics to underscore the contrast between autarchy and hamarchy. Cold, industrial, mechanical, even geometric images are deployed as if arrayed for battle against the warm and supple image of a living system.⁵²

Lieber's definition of hamarchy, on the other hand, points ahead to the idea of institutional liberty:

Hamarchy... is that polity, which has an organism, an organic life, if I may say so, in which a thousand distinct parts have their independent action, yet are by the general organism united into one whole, into one living system ... In the autarchy the law is the positive will of power; in the hamarchy it is much more the expression of the whole after a thousand modifications. Hamacratie polities rest materially on mutuality; autarchy on direct power. The principle of autarchy is sacrifice; the principle of hamarchy is compromise. Blackstone had in mind what I call hamarchy, when he said, "every branch of our civil polity supports and is supported, regulates and is regulated by the rest." It is not the "balance of power" which makes the hamarchy, but the generation of power. A hamarchy cannot be compared to a pyramid, or to concentric circles, or to a clock-work, but only to the living animal body, in which numerous systems act and produce independently in their way, and yet all functions unite in

⁵⁰ *Political Ethics*, I, 411.

⁵¹ *ibid.*, 411.

⁵² See also "Anglican and Gallican Liberty" in *Miscellaneous Writings*, II, 380.

effecting that which is called life. If ever there was a republic of action it is the animal body ...⁵³

Although biological analogies had been used to support arguments for the divine right of kings, Lieber here anticipated the general systems theory that developed a century later.

Institutional Liberty

Lieber apparently dropped both hamarchy and autarchy from his political lexicon by the time he wrote *On Civil Liberty and Self-Government*. "Self-government" and "absolutism" were substituted. He wrote that "there is no formula by which liberty can be solved, nor are there laws by which liberty can be decreed, without other aids."⁵⁴ The needed character can only be acquired in a practical way.

How then is real and essential self-government, in the service of liberty, to be obtained and to be perpetuated? There is no other means than by a vast system of institutions, whose number supports the whole, as the many pillars support the rotunda of our capitol.⁵⁵

Lieber defined institution as "a system or body of usages, laws, or regulations of extensive and recurring operation, containing within itself an organism by which it effects its own independent action, continuance, and generally its own farther development. Its object is to generate, effect, regulate, or sanction a succession of acts, transactions, or productions of a peculiar kind or class."⁵⁶ Self-government is one of its chief properties. It "insures perpetuity, and renders development possible." Otherwise, history "sinks to mere anecdotal chronology."

Impulsiveness without institutions, enthusiasm without an organism, may produce a brilliant period indeed, but it is generally like the light of a meteor. That period of Portuguese history which is inscribed with the names of Prince Henry the Navigator, Camoens, and Albuquerque is radiant with brilliant deeds, but how short a day between long and dreary nights!⁵⁷

Lieber extended this idea to include entire systems of institutions. Much of his magnum opus is devoted to a comprehensive list of what he

⁵³. *Political Ethics*, 411-12.

⁵⁴. *Civil Liberty*, 298.

⁵⁵. *ibid.*, 300.

⁵⁶. *ibid.*

⁵⁷. *ibid.*, 306.

considered to be the constituents of civil liberty (56-255). This lengthy section is introduced by a chapter entitled "Anglican Liberty" (51-55).

Lieber's characterization of these civil liberties reinforces his view that they depend upon well-articulated and firmly established political and social institutions. Although they may be classified any number of ways, this partial list drawn from "Anglican and Gallican Liberty" and *On Civil Liberty and Self-Government* is organized for the sake of convenience.⁵⁸

Briefly, the following are protected: persons generally; public and private communication; free production and exchange; religion or worship; lawful opposition to the administration; the minority against the majority; aliens and foreigners; freedom of the people to adopt the government they think best; free choice of residence; freedom of emigration and immigration; and the rights of petition, assembly, bearing arms, and resisting unlawful authority or unlawful demands.

The following are prohibited: extra-governmental power, domination by the central government, unconsented legislation, quartering soldiers in private homes without consent of Parliament, and dictation by one or many.

Finally, the institutional safeguards of liberty include popular control over public funds, self-taxation, judicial review, trial by jury, trial by common courts, due process, publicity concerning political and judicial activities, submission of the army to the legislature, the parliamentary veto, responsibility of ministers and other officers, dependence of the executive on legislative appropriations, restraints on the war-making and peace-making power, independence of the judiciary, the common law principle of precedent, and supremacy of the law.

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 protection of the minority. Many of these have originated, nearly all of them have first been developed, in England ...⁵⁹

Thus modern liberty — that is, institutional liberty — consists in "these practical provisions and political contrivances." Herein lies the difference between medieval and modern liberty. Medieval rulers isolated political

⁵⁸. *Miscellaneous Works*, II, 373-75; *Civil Liberty*, 83-85.

⁵⁹. *Civil Liberty*, 375.

independence by chartering freedom. In modern times, the people charter governments.⁶⁰

The chapter on "American Liberty" (256-69) adds the following to the list of Anglican liberties: republicanism, federalism, separation of church and state, political equality, popular elections, separation of powers, judicial review, impeachment, a written constitution, freedom of navigable rivers, and several others.

Lieber maintained that these liberties were still in a "nascent stage" on the European continent, which had gone through "periods of absorbing and life-destroying centralization."⁶¹ Instead, a prudential balance of local and central initiative is required. Thus Lieber addressed the age-old dilemma of unity and diversity — the One and the Many — through a fluid mixture of what he called individualism⁶² and socialism, reason and tradition. Human nature and society should be regarded as both singular and plural:

Two elements constitute all human progress, historical development and abstract reasoning. It results from the very nature of man, whom God has made an individual and a social being. His historical development results from the continuity of society. Without it, without traditional knowledge and institutions, without education, man would no longer be man; without individual reasoning, without bold abstraction, there would be no advancement. Now, single men, entire societies, whole periods, will incline more to the one or to the other element, and both present themselves occasionally in individuals and entire epochs as caricatures. One-sidedness is to be shunned in this as in all other cases ...⁶³

Institutional self-government is distinguished by its tenacity, assimilative power, and transmissible character. It can be successfully exported. But it increases only slowly and it depends on the willingness of citizens to conscientiously obey lawful exercises of authority. It is threatened by sejunction [schism] if local interests begin to dominate, as it had in the Netherlands after it had won independence, and it may perish if the institutions themselves become corrupted or degenerate. Lieber also recognized that evil institutions may thrive for a time, and lamented the malignant growth of slavery as a threat to American liberty.

At the opposite pole from institutional liberty is the fusion of legislative and executive functions that Lieber called, variously, "the power,"

⁶⁰ *Miscellaneous Works*, II, 376.

⁶¹ *ibid.*, 388.

⁶² Both Lieber and Tocqueville claimed credit for coining the term.

⁶³ *Civil Liberty*, 260-61.

"Caesarism," and "Rousseauism." He examined the perplexing notion of an "elected despot" in two chapters on "Imperial Sovereignty" (374-88) and found the ultimate form of this "democratic absolutism" in the Bonapartist claim that the emperor is the embodiment of the general will. In this ultimate expression of Gallican liberty, Lieber had in mind the French Revolution and its aftermath, echoing Burke.⁶⁴

Afterword

It is easy to read Francis Lieber's theory of institutional liberty as an idealization of the American constitutional tradition. But in the context of the times, it was also a defense of union against the fragmentation that sectional rivalries seemed to threaten.

The sensitivity of Lieber's position at South Carolina College compelled him to maintain a discreet public silence on the subject of slavery. One consequence was a personal rupture with Charles Sumner that lasted for several years. As the country drifted toward the sejunction he dreaded, Lieber chose to move where his greatest sympathies lay, a year before securing another academic appointment. But the move north did nothing to insulate him from the tragedies of the conflict he foresaw.

An émigré scholar, Lieber was a multiple exile. This adds to his interest. His attachments were cosmopolitan rather than local. In the end it was the strength of an idea — a commitment to the Union as an ideal — that prevailed over all considerations of place. If indeed it was disunion that had kept Germany so long in thrall, it was natural that Lieber should keenly feel the threat of disunion as an American. His theory of institutional liberty may be regarded, at least in part, as a response to John C. Calhoun's theory of the concurrent majority.

The Lieber family, like so many American families, was torn by the war. The talented eldest son, Oscar, died in the service of the Confederacy.⁶⁵

⁶⁴. Years later Hannah Arendt acknowledged a similar debt to Burke in her own conception of totalitarianism. "A conception of law which identifies what is right with the notion of what is good for — for the individual, or the family, or the people, or the largest number — becomes inevitable once the absolute and transcendent measurements of religion or the law of nature have lost their authority. And this predicament is by no means solved if the unit to which the 'good for' applies is as large as mankind itself ... Here, in the problems of factual reality, we are confronted with one of the oldest perplexities of political philosophy, which could remain undetected only so long as a stable Christian theology provided the framework for all political and philosophical problems, but which long ago caused Plato to say: 'Not man, but a god, must be the measure of things.'" Hannah Arendt, *The Origins of Totalitarianism*, new edition (New York, 1973), 299.

⁶⁵. James O. Breeden, "Oscar Lieber: Southern Scientist, Southern Patriot," *Civil War History*, 36 (1990), 226-49.

Two other sons fought — and one was severely wounded — for the Union. In the hour of crisis, Lieber supported policies that could be challenged from the pages of his own books. But his theory was pliant enough to make a place for prudence and the use of temporary expedients.

Lieber was a nationalist of an unusual sort. He consistently encouraged economic free enterprise in his teaching and writings.⁶⁶ He regarded the rise and fall of nations as simply part of a larger picture. National institutions permit the encouragement of commerce and interdependence among nations. This, in turn, puts absolutism on the defensive, as the chapter on "Gallican Liberty" (279-96) makes clear.

This growing interdependence, then, permits the principle of institutional liberty to operate on a global scale as well as locally. It is this third characteristic of the modern epoch — the flourishing of many nations "in the bonds of one common moving civilization"⁶⁷ — that seems to have been the greatest encouragement to Lieber's hopes for the continued growth of liberty.

To learn liberty, I believe that nations must go to America and England, as we go to Italy to study music and to have the vast world of the fine arts opened up to us, or as we go to France to study science, or to Germany that we may learn how to instruct and spread education. It was a peculiar feature of antiquity that law, religion, dress, the arts and customs, that everything in fact, was localized. Modern civilization extends over regions, tends to make uniform, and eradicates even the physical differences of tribes and races. Thus made uniform, nations receive and give more freely. If it has pleased God to appoint the Anglican race as the first workmen to rear the temple of liberty, shall others find fault with Providence? The all-pervading law of civilization is physical and mental mutual dependence, and not isolation.

Many governments deny liberty to the people on the ground that it is not national; yet they copy foreign absolutism. There is doubtless something essential in the idea of national development, but let us never forget two facts: Men, however different, are far more uniform than different; and most of the noblest nations have arisen from the mixture of others.⁶⁸

[Note: This paper was presented at the annual meeting of the Southwestern Political Science Association, San Antonio, March 31, 1994.]

⁶⁶ See "A Letter of Dr. Francis Lieber to D. J. McCord," in Frederic Bastiat, *Sophisms of the Protective Policy*, trans. D. J. McCord (New York, 1848), 5-14; "Notes on Fallacies of American Protectionists," in *Miscellaneous Writings*, II, 389-459.

⁶⁷ *Miscellaneous Writings*, II, 239.

⁶⁸ *Civil Liberty*, 295-96.