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Columbia and Slavery
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A Tale of Two Columbias:
Francis Lieber, Columbia University and Slavery

Columbia's most famous Civil War-era professor, Francis Lieber, is best known for his authorship of the Lieber Code, adopted by President Abraham Lincoln during the Civil War as the first official set of legal and ethical rules for conducting warfare. The guide, which prescribes humanitarian treatment of enemy combatants, forms the basis for the Geneva Convention, the most enduring source of international law today. Lieber taught law and political science at both Columbia College and Columbia Law School from 1857 to his death in 1872, and both schools proudly point to Lieber as an intellectual luminary who launched Columbia's now-shining reputation as a center for the study of international law and human rights.¹ It is surprising, therefore, that a man whose work is routinely referred to as the founding document of the international code of human rights owned slaves for 22 years.

Our university was not the first Columbia in Lieber's life. His first academic post was at South Carolina College in Columbia, South Carolina, from 1835 to 1857, where he taught political science, kept slaves, and kept silent on the national issue of slavery. By the middle of the Civil War, however, Lieber was a professor at Columbia University, the president of the anti-slavery New York Loyal Publication Society, a best friend of Charles Sumner, and a trusted advisor to Lincoln and his war department.

Lieber's intellectual and emotional evolution on slavery is nuanced. It is difficult to say whether his underlying beliefs regarding slavery changed over time. Lieber had never liked slavery, but neither would he ever have described himself as an abolitionist. The way he expressed his beliefs, however, changed drastically upon his move to New York. He had certainly become a beneficiary and a silent prop-

¹ "International Programs at Columbia Law School," Columbia Law. <http://web.law.columbia.edu/international-programs>; "From Gettysburg to Guantanamo: 150 Years of the Lieber Code & The Law of Armed Conflict," Columbia Law. <http://web.law.columbia.edu/human-rights-institute/speakers-events/lieber-code-conference>

agator of slavery in South Carolina, and he certainly became a much more outspoken opponent of it when he moved to New York to become a professor at Columbia in 1857.

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Francis Lieber boasted a varied resume that would have been impressive had the accomplishments been divided among five people. Indeed, had the accomplishments belonged to five different people, it might be easier to resolve the dazzling contradictions contained in his life. He was a German immigrant from Prussia who loved his country but fled to America to escape persecution as a political dissident. He established himself in Boston as a Northern intellectual with a strong sense of nationalism, but soon left to teach in South Carolina, which was actively attempting to nullify federal laws. He deplored the institution of slavery, but owned slaves. He was a staunch Unionist, but had a son fight in the Confederate army. He earned prestige for Columbia by serving as a wartime adviser to Abraham Lincoln and his generals, but was pushed out of the College by Columbia president Frederick A. Barnard. For a man with such complex credentials, the story of Lieber's life is one of remarkable moderation. He was deeply involved in the most tempestuous moral and political debates of his day, and while his opinions were always vigorously stated, he always stayed firmly on the "respectable" side of reform.

His confidence in institutions of liberal government shaped his fiery youthful nationalism into a belief in the "orderly development by the process of law" that would go on to serve Lieber well in his career. This establishmentarianism was the backbone of his Unionism, allowing him to criticize the economic inefficiency of slavery without alarming his employers at his first steady academic job, and bolstering his credentials when he wrote the treatise for which he is most famous, the codified rules of war referred to as the Lieber Code.² Of course, his moderate manner of enacting change also served his immediate purposes. By remaining, as James Kent, the Columbia law professor and Lieber confidant, put it, "such a temperate & reasonable reformer, & so free from all ultra Reform & fanaticism...so very safe,"

² Frank Freidel, *Francis Lieber, Nineteenth Century Liberal*, (Baton Rouge: Louisiana State Press, 1947), 37.

Lieber preserved the social capital which, as an immigrant, he had won with some difficulty, and thereby fortified his and his family's economic future in America.³

Francis Lieber's ship landed in New York City on June 20, 1827. He sailed for Boston several days later to connect with professional acquaintances from London, and secured a job as a teacher of gymnastics and swimming (not an inferior position in an era where development of the body was a virtue on par with cultivation of the mind).⁴ However, Lieber longed for work that drew fully on his education and ambition, and undertook a project to fulfill this aim. He translated a respected German encyclopedia, wrote and solicited new articles, and edited it all into the *Encyclopedia Americana*, the first American encyclopedia. Published in volumes from 1829 to 1833, it earned enough in royalties to convince Lieber's new bride, Matilda Oppenheimer, that she had not made a mistake in moving from London to America to join him. The Encyclopedia opened doors into genteel New England society: in New York, Lieber met James Kent, a former Columbia law professor, who would become a lifelong friend. In Philadelphia he made the acquaintance of Nicholas Biddle, president of the Bank of the United States, who would help secure his first stable teaching position.

However, no such stable position had materialized for Lieber in Boston. He continued to travel in New England to work on smaller projects, and became involved with a group of prominent Philadelphians who were concerned with theories of penology and prison reform. With the work he began on this topic, Lieber was laying the groundwork for opinions on race and slavery that would become important to his legacy. Beginning in 1831, he visited Sing Sing prison and questioned the wardens to investigate racial differences in what he (incorrectly) assumed was an environment where every inmate was treated equally, and hence an ideal social laboratory. Lieber reported that of 800 convicts at Sing Sing at the time,

³ Kent to Lieber, Sept 2, 1833, in interleaved copy of Beaumont and Tocqueville, *On the Penitentiary System in the United States*, Lieber papers, Johns Hopkins University, quoted in Freidel, *Francis Lieber*, 96.

⁴ Joseph Dorfman and R. G. Tugwell, *Early American Policy: Six Columbia Contributors* (New York: Columbia University Press, 1960), 251.

there were 200 “individuals of color.”⁵

Contrary to what might be expected from an antebellum prison, Lieber reported, the prison physician “had not found that there was any striking difference between the diseases of the blacks and whites, not did they assume any different character in their course.”⁶ Lieber’s findings may have encouraged him to keep a more open mind with regard to his beliefs on race: “As to moral difference between the prisoners of the two colors...it is a curious fact that in general the colored people behave themselves better; they are more orderly, follow the laws more willingly, and work more steadily... more colored people ask for admission to the Sunday-school of the prison, and for instruction in reading, than white people.”⁷ However, Lieber was not immune to the popular racially motivated pseudoscience of the time. He wished that well-known German phrenologist Johann Spurzheim had finished his study of the differences in head shape between blacks and whites, which Lieber was sure would aid his investigation.⁸

Lieber first chronicled his emerging views on slavery at length on a trip to Niagara Falls, on which he embarked for the purpose of writing a fashionable travel journal. This was his latest scheme to earn an income after the proceeds from the *Encyclopedia Americana* ran out. The travel diary, which Lieber called “Letters to a Gentleman in Germany, Written after a Trip from Philadelphia to Niagara” (renamed “A Stranger in America” by the English publisher, to Lieber’s dismay) was published in 1834; critics received it quite well, but it failed to bring Lieber the steady income he craved. It contained commentary and anecdotes on everything from American natural scenery and place names to American women, but the more sober commentary reflected Lieber’s early opinions on slavery and abolition.⁹

Lieber announced that “in the abstract, I hold slavery to be, —philosophically, an absurdity, (man

⁵ “Queries and answers respecting the colored convicts in the Sing-Sing state prison”, August 19, 1833, Lieber papers, quoted in Oz Frankel, *States of Iniquity: Social Investigations and Print Culture in Nineteenth-Century Britain and the United States*, (Baltimore: the Johns Hopkins University Press, 2009) 216; Francis Lieber, *Letters to a Gentleman in Germany, written after a trip from Philadelphia to Niagara*, (Philadelphia: Carey, Lea & Blanchard, 1834), 291.

⁶ Lieber, *Letters to a Gentleman*, 291.

⁷ Lieber, *Letters to a Gentleman*, 292.

⁸ *Ibid.*

⁹ Freidel, *Francis Lieber*, 111.

cannot become property,) — morally a bane both to the slave and his owner; — historically, a direct violation of the spirit of the times we live in, and with regard to public economy, a great malady, to any society at all advanced in industry.” However, this moral, economic and philosophical repudiation seems to stand in contrast to the rest of the travel journal. Lieber found that most Americans were not inclined to discuss the moral principles behind slavery; they preferred to start from the assumption that slavery existed. Lieber therefore endeavored to avoid moralizing and focus instead on practical ways to deal with the institution of slavery. The result was a moderate and nuanced tract that at times contradicted the image of the liberty-loving, slavery-loathing Lieber of lore.¹⁰

To Lieber, abolitionists were naive. He imagined an America in which all slaveowners emancipated their slaves immediately. “What would be the consequence? We should have a large increase of free colored population, which, if we choose, might be politically as free as any class of our citizens. What would be gained? Political equality is of very little value compared to social equality.” Lieber accurately predicted that emancipation would not lead directly to full equality. Instead of suggesting methods to achieve this equality, however, Lieber endeavored to prove that equality could never take place.¹¹

Lieber spoke of the apparently conventional contemporary wisdom that black bodies emitted a “peculiar odor”, and maintained that this was known by white people to be the primary reason that the two races could never be equal. Lieber admitted that he himself could not perceive this alleged odor, but forged on to connect anecdotes of governments around the world employing high ranking officers of color with that culture’s obvious ability to withstand the odor.¹²

Lieber was unable to envision a society in which black and white citizens intermarried; his racial pride would not allow it. “With me, a free social intercourse and intermarriage are one and the same: one must lead to the other...I am a white man, and I for one love my race.” He acknowledged the many “misdeeds and crimes” committed by Europeans, but felt that Europeans nevertheless held “immense intellec-

¹⁰ Lieber, *Letters to a Gentleman*, 289.

¹¹ *Ibid.*, 293.

¹² *Ibid.*, 295-6.

tual superiority above all other tribes and nations. . . . I for one pray,” Lieber wrote, “that heaven’s best blessings, the extension of knowledge and civilization, may be showered down on our brethren of a darker skin, but desire with equal anxiety that the white race be continued in its purity.”¹³

This declaration is without question blatantly racist. The young Lieber may have had lofty ideas of political rights technically belonging to all, but he shared the view of many of his contemporaries that too-quick extension of suffrage, especially to those who did not look like him, would turn a carefully ordered society into a tyranny of the majority. Lieber was not starry-eyed over American ideals of the popular will; the American system was strong because it had learned from history and experiences of other (European) governments, not because it was ideologically purer than its predecessors.¹⁴

The last section of these first published notes on slavery contained three suggestions for how to resolve the situation. First, Lieber recommended gradually transitioning from slavery to a version of European serfdom, where blacks would form their own “peasant” class but would not be enslaved. This peasantry would be “endowed with certain rights” and would have a path, “by good behavior and industry, to final emancipation.”¹⁵ However, he recognized that the large number of slaves would make race separation difficult. Therefore, colonization, “either in Africa or in some distant part of our own continent, should be kept steadily in view as the result to be finally effected.” This suggestion was not new or unique; beginning in the 18th century, many in the white American elite believed that sending ex-slaves to a colony in Africa was the best way to end slavery without providing citizenship for all blacks. The American Colonization Society had been formed in 1816, and a New York State chapter was inaugurated in 1829.¹⁶

In the meantime, Lieber issued a plea to end the inhumanity of the Fugitive Slave Act of 1793.

¹³ *Ibid.*, 296-7.

¹⁴ George M. Frederickson, *The Inner Civil War: Northern Intellectuals and the Crisis of the Union*, (New York: Harper & Row, 1965), 24-25.

¹⁵ Freidel, *Francis Lieber*, 298-99.

¹⁶ Lieber, *Letters to a Gentleman*, 298; “The African-American Mosaic: Colonization,” Library of Congress, <http://www.loc.gov/exhibits/african/afam002.html>; Sarah Schutz, “‘The Accomplishment of this Great Moral Enterprise’: Columbia’s Involvement in the African Colonization Movement,” (Research paper, Columbia University, 2015), 2.

Nothing, he said, “can justify a law which directs a colored person, who cannot give a ready explanation of his condition as to freedom, to be arrested, and, if nothing can be proved against him, to make him pay the expenses of his arrest, and if he cannot pay them, to be sold in order to defray them. It is double and triple penalty.”¹⁷ Lieber agreed that the prevalent white obsession with slave uprisings was a legitimate reason for not emancipating all slaves at once. He also placed the decision to emancipate squarely in the purview of state legislatures, “those true foundations of our liberty, without which it would not have been possible even to preserve her appearance.” This defense of states’ rights would later embarrass him and duly change as his role in Unionist organizations grew. Lieber ended his commentary in his supposedly light travel journal with an altogether conservative message. “I do not hesitate for a moment to say, that by far the greatest majority of our southern people would be glad, could they abolish slavery,” Lieber argued, but “may we never experience a sudden emancipation in the south. The whites would either become the slaves of the blacks, or at least the suppressed class, or they would have to emigrate, and the south would be lost to our Union, and for a long time even to mankind.”¹⁸

The newly Americanized Lieber thus established himself as a safe political commentator who would not challenge the establishment. Indeed, his adherence to conventional beliefs on slavery and race may have been an important part of his assimilation strategy. Even if he did not yet disagree with this benign view of slavery, he must have realized that it would not behoove him, especially in his financial predicament, to ally himself with the oppressed, or with abolitionists, before he had secured his position in the intellectual upper class. If one takes this as Lieber’s only statement, one would find him a typical moderate Northerner who found slavery distasteful but abolition far too radical, and who was more interested in making the problem disappear than in any sort of moral imperative. However, this was only the opening foray in Lieber’s long battle with the demons of slavery; he had not yet spent time in the South or experienced the institution firsthand, and he had not yet met many of the people who would become some of his most important influences on slavery.

¹⁷ Lieber, *Letters to a Gentleman*, 299.

¹⁸ *Ibid.*, 301.

It was while Lieber was in Washington in 1834 that he met “a gifted young protégé of Judge Story’s, a recent Harvard Law School graduate named Charles Sumner.” Lieber, “with his slow, precise, but unceasing flow of anecdotes and ideas, covering two hemispheres and every conceivable topic from Kantian pacifism to the Parisian styles of ladies’ bonnets,” was an excellent mentor for the “knowledge-hungry” Sumner.¹⁹ This was the beginning of a long friendship and prolific correspondence, touching on the most important political and philosophical issues of the day. They discussed slavery at length, and it would be this topic that would incite the only real break in this decades-long flow of communication.

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COLUMBIA I, South Carolina, 1835.

Lieber took his first steady academic job, chair of political science at South Carolina College, in 1835. His Philadelphia friend Nicholas Biddle had stepped in to help Lieber secure the position. He knew from the start that South Carolina was a very different place from Boston or Philadelphia. Lieber had been the second choice for the professorship; it had first been offered to Thomas R. Dew of the University of Virginia, an ardent proslavery advocate. Lieber wasn’t overly enthusiastic about accepting a job at a remote college which was only hiring because the trustees had forced the entire faculty to resign the previous year.²⁰ However, his persistent need of a steady income, and his fatigue after having pursued plan after plan for new projects in the North in an effort to finally achieve financial stability, overpowered his cultural and ideological preferences.

Lieber passed his application interview for the post satisfactorily. His academic credentials and broad range of knowledge were most impressive and his personal piety was evident. On the matter of his “attitude toward Southern institutions,” he reassured his interlocutor with a vehement defense of free trade and with the household presence of a black slave, George, who had been lent to Lieber by his wife’s

¹⁹ Freidel, *Francis Lieber*, 109.

²⁰ *Ibid.*, 117.

Puerto Rico-based brother.²¹ Before accepting the professorship, Lieber traveled to South Carolina in 1834 to see the college and meet his would-be colleagues and compatriots. It was Lieber's first personal experience with the Southern plantation system. He attended a dinner at the home of former governor James Hamilton at which barefoot slaves served a lavish meal with four different meats, after which Lieber visited neighboring plantations with Hamilton.²²

The visit didn't seem to shock Lieber - he had known more or less what he would find in Columbia, South Carolina, even before this trip. "I must bid farewell to all that is most precious and dear to me," he wrote melodramatically to his German jurist friend Karl Joseph Anton Mittermaier, "and shall be compelled to live in a Slave State; yet I shall there have a settled sphere of activity, and shall be able to exert my influence in the right direction. It will give me the means of supporting my family, and the time to write on subjects which have long occupied my mind."²³ It is unclear whether he meant to "exert his influence in the right direction" regarding slavery or simply in the direction of Northern intellectualism and cosmopolitanism, but nullification-embroiled South Carolina was not of a mind to allow either.

Thus began Lieber's self-appointed 'exile' in the South. The day-to-day reality was not as intolerable as Lieber's more dramatic missives might indicate; at least, Lieber made a real effort to adapt to his surroundings. After the extravagant dinner at Hamilton's plantation, Lieber wrote in his diary that Hamilton was "uncommonly kind" and that he felt "more attracted" to him "than to any American before." Several days later, upon dining in Charleston, Lieber commented that his hosts had a "fine house; the furniture not quite of the latest fashion. I hate the northern fashionable uniformity" and praised the "uncommonly fine wines."²⁴

However, if Lieber thought his academic post would protect him from partisan attacks and debates, he was mistaken. Lieber's first significant trial as an ideological misfit in South Carolina was set

²¹ *Ibid.*, 118.

²² Thomas Sergeant Perry, ed., *The Life and Letters of Francis Lieber*, (Boston: James R. Osgood and Company, 1882), 104-105; Freidel, *Francis Lieber*, 121.

²³ Lieber to Mittermaier, Feb. 28, 1835, in Perry, *Life and Letters*, 104.

²⁴ *Ibid.*, 104-105.

for him soon after he arrived in Columbia with his wife and son, Oscar, in tow. The Presbyterian party, which had come out of the South Carolina College reorganization without any faculty posts to fill with their sympathizers, accused Lieber of being pro-tariff, anti-states' rights, an atheist and an abolitionist.²⁵ Lieber responded with a letter to the editor of the *Columbia Telescope*, appearing in the August 1, 1835 issue.²⁶ He pointed out that far from providing fuel for the abolitionist fire, the *London Monthly Review* had accused him of sharpening the arguments against abolition. Canny, Lieber avoided making a positive statement about his views on slavery. Instead, in his letter to the editor, he defined abolitionism in such a way that he would fall outside its definition: "An abolitionist is a person who is desirous of immediate and unconditional emancipation of that part of our population which labors under servitude, and who openly or clandestinely maintains the expediency or right of meddling with this subject, for any one else but each State within her limits. —And, sir, I am not an abolitionist."²⁷

Lieber thereafter adopted a strict policy of denying abolitionism, deflecting requests for a positive statement on his views regarding slavery, and otherwise keeping silent on the topic in public. He resolved to summer in the North, both to avoid the South Carolina heat and to search for a better post, preferably in a Northern university. He became acquainted with Columbia trustee Samuel Ruggles and several other college-affiliated professors and administrators, whom he hoped would prove useful in his employment search.²⁸ In the meantime, he was so faithful to his discreet protocol regarding slavery that he struck up friendly acquaintances with some of the leading proponents of slavery, including John C. Calhoun and the lawyer and planter David J. McCord.²⁹ These were not the only measures he took to avoid detection as an enemy of slavery, however.

²⁵ Freidel, *Francis Lieber*, 124.

²⁶ Frank Freidel, "Francis Lieber, Charles Sumner, and Slavery," *The Journal of Southern History* 9 (1943): 75.

²⁷ Lieber to the *Columbia Telescope*, July 16, 1835, Lieber papers, quoted in Freidel, *Francis Lieber*, 125.

²⁸ Even as early as 1842, Lieber suggested to Ruggles that he would make a suitable president for Columbia College, but knew his foreign status would preclude that. Lieber to Ruggles, July 14, 1842, quoted in Louis Martin Sears, "The Human Side of Francis Lieber," *South Atlantic Quarterly* 27 (Jan 1928), in Miner papers, Box 42, "Papers on the History of the University," note card on Francis Lieber in folder "K.C. Literary and Debating Society - Murray, Joseph," Columbia University Rare Books and Manuscripts Library.

²⁹ Harmut Keil, "Francis Lieber's Attitudes on Race, Slavery and Abolition," *Journal of American Ethnic History* 28 (2008), 1.

On October 28, 1835, only a few months after his arrival in South Carolina, Francis Lieber reported to his diary: “To-day Tom, as we call him, entered our service. He is about fourteen years old, and we pay his master \$4.50 a month. The little boy brings with him a blanket, which is all he ever had to sleep on. He has but one shirt. Slavery is abominable in every respect. It is a dirty, foul thing.” Tom was a slave whom Lieber was renting from his master. The wholehearted denunciation of slavery is difficult to reconcile with the immediately preceding unambiguous evidence that Lieber was now directly participating in the institution. Indeed, Lieber recognized his own hypocrisy in his diary entry the very next evening: “Last night Matilda and Abby (the nurse) made a mattress and pillow for little Tom. I feel humbled now more than ever. O God! what is man with all his religion, learning and philosophy? Cold, hard-hearted, inconsistent, as soon as the question is about money, he adopts another philosophy, another logic, and turns the most positive commands of religion into a means to serve his interest.”³⁰

Nor did Lieber’s “inconsistency” stop there. On January 9, 1836, Lieber bought two enslaved women, Betsy and her daughter Elsa. Lieber wrote in his diary that he saw Betsy and her daughter sitting on a bench in front of the courthouse, and was “attracted by Betsy’s ‘good looks’ and Elsa’s ‘healthy, cheerful, and bright appearance’.” Lieber asked the slave dealer their price, and then went home. Later that day, Betsy visited the Liebers’ home and asked if he did not want to buy her, vouching for her domestic skill and mentioning that she did not want to be separated from her daughter. Lieber consulted a physician friend, Dr. Gibbes, and a planter and lawyer friend, David McCord, on the decision. The women having received a bill of good health, Lieber paid \$1,150 to the slave dealer for Betsy and Elsa. McCord, a leading proponent of slavery, helped smooth the transaction, convincing Elsa’s previous owner to sell her to Lieber so that mother and daughter could live in the same house.³¹

Lieber was clearly conflicted about the decision to rent and then buy slaves. He indicated money

³⁰ Perry, *Life and Letters*, 109.

³¹ Keil, “Lieber’s Attitudes,” 13.

The purchase was not to the Liebers a mere monetary transaction. Lieber reported that his wife Matilda, “though absolutely convinced that we did right under the given circumstances, . . . had a very severe headache Friday night; she was very much moved by the matter.”

as a motivating factor; did the Liebers not have enough to pay a household servant? Was Lieber pressured socially to keep slaves, so as to fit into Columbia society? Was he worried enough about another accusation of abolitionism that he decided to take out insurance against that claim?

It does seem the Liebers were indeed in need of household help. They had apparently for some time hired cousins and other relatives from Germany to help around the house, but “social pressure forced Lieber and his wife to buy two slaves...because South Carolina society would not tolerate allowing young white women to do such labor.”³² It was perhaps after this that Lieber rented Tom from his master, hoping to find a socially acceptable alternative to buying a slave outright.

However, the most revealing explanation comes from Lieber’s own rationalization in his diary, in a list entitled “reasons why we bought them”:

“1. Where slavery exists, it is far better to own slaves than to hire them. They feel attached to the master, because they are entirely dependent upon him, and the master not only feels more interest in them but can also do something good for them, habituate them to good manners etc., whereas he has no influence over hired slaves.

“2. It is no injustice to have slaves where slavery exists and emancipation does not happen. We know that we want to be good to them, and they shall be treated as kindly as anywhere. Alas, to whom, and whereto, might the mother have been sold!

“3. We want to make them into good servants, and encourage them to cleanliness.

“4. There is a constant turnover with hired slaves, and they themselves by far prefer to be with their master than elsewhere. A good slave hates to be sold or hired out.

“5. We believe it will be cheaper for us.

“6. Math[ilda] wants to thoroughly educate the slave wom[e]n.”

Lieber added to the above rationalizations a plea to remember his 1834 book, *Letters to a Gentleman in Germany*, and how he plainly set forth his views as to the despicable nature of the institution at

³² Paul Finkelman, “Francis Lieber and the Law of War,” *New York Times*, March 2, 2013.

that time. He assured his diary, and perhaps himself, that he still believed slavery to be “a great evil and misery in our time. Absolute power when granted will often be abused. The horrible shows in so many details!”³³

Cloaked in the paternalistic language of the benevolent slaveholder (“they shall be treated as kindly as anywhere...we want to make them into good servants, and encourage them to cleanliness”) is the most significant reason for the Liebers’ plunge into slaveowning: it was more convenient and cheaper than any other alternative. Interestingly, Lieber makes no mention of social pressures (e.g. the possibility that he would lose his job if he was seen to be less than tolerant of slavery) in his list of reasons. If he had, it would be much easier to ascribe his purchase to self-preservation, an action taken under external duress or threat of unemployment. Instead, Lieber seems to have taken the initiative himself, and no matter how compelling the economic motivation, Lieber felt the philosophical and moral implications of his decision.

Lieber seemed to treat his slaves with alternating distaste, dismissal and pity. He wrote, “The servants are very slow — dirty of course. Slovenly — forget everything,” but acknowledged “They know and think probably more than people believe they do.”³⁴ The young Elsa suffered from her position as a young enslaved woman on a college campus; she fell pregnant in the spring of 1841, possibly by a student, and died later that summer after a miscarriage. Lieber was much affected by the whole affair; he was pained by the fact of her pregnancy and more so by her death. This did not stop him from lamenting the financial loss (“fully one thousand dollars — the hard labor of a year”) but he extended her the dignity of Christian salvation (“As to Elsa herself, why she is better off. If there is immortality she must have gone to a better state”).³⁵

Lieber eventually managed to quash his own moral qualms in becoming a slaveholder. Elsa and Betsy were the first in a succession of Lieber slaves from 1836 until 1857. The family seemed to own two slaves at a time; in the 1850 census, they reported two slaves, a 45-year-old woman and a 13-year-old

³³ Francis Lieber’s slavery notebook, January 10, 1836, in Lieber papers, quoted in Keil, “Lieber’s Attitudes,” 13-14.

³⁴ Lieber, Slavery notebook, quoted in Freidel, *Francis Lieber*, 236.

³⁵ *Ibid.*

boy.³⁶ However, Lieber could never quite take his position as slaveholder, nor the fact of the institution, for granted. He kept a “slavery notebook,” full of newspaper clippings, quotes, notes and questions about slavery, from 1836 to 1840. He seemed to challenge himself to confront and examine the institution frequently; if not in his professional capacity (there is no evidence that he lectured to his students on anything pertaining to slavery), then in his personal research and writings.

In 1849, he began a linguistic study of slave speech in South Carolina, culminating in an unpublished manuscript of “10 small notebooks with over 800 entries containing Lieber’s observations and comments on words and expressions that he considered to be new.” While only about 40 of the 800 entries contain references to “servants” or “Negros,” the manuscript indicates that Lieber approached the topic of the speech of slaves from a scientific point of view with a nod to his membership in the ruling class of society. Of the terms used to designate slaves, Lieber showed concern for who preferred which: “Servant means here always a slave and is preferred by both whites and coloured, to slave... Coloured is used by negroes for all who have colour, and also by whites who wish to speak inoffensively. Properly speaking colored people are mulattos. Negro is disrelished by negroes.” In another observation, he places himself in the picture: “Our negroes say ligious for religious, piscopalian for episcopalian, etc.” It is unclear whether he was referring to the slaves he himself owned or was taking ownership of the entire region’s enslaved peoples with the word “our.”³⁷

It is clear from the manuscript that Lieber talked to enslaved people other than just the two women working in his house. His observations were frequently from direct conversation (“A negro said to me”) and he wrote a whole section on the speech of “most untutored field negroes,” whom, possessing no plantation himself, Lieber would have had to specifically seek out to interview. Lieber’s studies in this field are unique; there is no other recorded academic discussion or documentation concerning the speech

³⁶ 1850 U.S. Census; John Hammond Moore, *Columbia and Richland County: A South Carolina Community, 1740-1990* (Columbia: University of South Carolina Press, 1993), 127.

³⁷ Stuart Davis, “Observations Concerning African American English in the Writings of Francis Lieber,” in Charles Mack and Harry Lesesne (eds.), *Francis Lieber and the Culture of the Mind*, (Columbia: University of South Carolina Press, 2005), 89, 93.

of enslaved Africans and their descendants. Lieber's doctoral degree, familiarity with slavery, and distance from conventional wisdom regarding slavery were apparently unusual: no other contemporary scholar seemed to view slave speech as linguistically important.³⁸

In addition to keeping personal observations and notes on the topic of slavery, Lieber's personal letters, particularly to Charles Sumner, are full of complaints about the ill effects of slavery on the Southern economy and psyche – and appeals to find him work in the North. “I have made up my mind I cannot live much longer here. I have wasted the better part of my life here; I mean to pass the evening [of his life] at least out of slavery and all those things.”³⁹ Surprisingly, Lieber was able in the meantime to find kindred spirits in his disgust for slavery in southerners Senator William C. Preston, a South Carolina professor named Nott and William DeSaussure. Even a local librarian returned from his first journey to the North and reportedly exclaimed, “Dr., I return, not an abolitionist but deplore slavery.” Lieber allowed his public views to fuse with those of some Southern elite intellectuals, who blamed the South's economic stagnation on the wastefulness of slavery but also agreed that the Southern refusal to improve the condition of slaves was the only respectable response to the impudent abolitionist pressure coming from the North.⁴⁰

Sumner had remained Lieber's faithful correspondent and outlet for much of his exasperation and despair at the Southern way of life. In response to Lieber's incessant complaints, Sumner exclaimed in an 1841 letter, “A curse on slavery!” However, in the early 1840s, Sumner, who up until that point had more or less agreed with Lieber's ambivalent position on slavery, began to adopt a more militant position along the lines of the anti-slavery campaigner William Lloyd Garrison. Lieber, still trapped in the South, saw his friend's radicalization as annoyingly consistent with Sumner's general proclivity toward dramatiza-

³⁸ Davis, “Observations,” 87.

³⁹ Lieber to Ticknor, from Columbia, SC, June 18, 1853, in Lieber papers, in Dwight D. Miner Papers, Box 4, “Papers on the History of Columbia University, 1938-1978,” folder on Francis Lieber, Columbia University Rare Books and Manuscripts Library.

⁴⁰ Perry, *Life and Letters*, 108; Lieber, Slavery notebook, quoted in Freidel, *Francis Lieber*, 237.

tion, and wrote Sumner that it seemed to him “slavery may be attacked without fiction.”⁴¹

This was a betrayal. Sumner, hurt, moved even farther toward the forces fighting passionately for abolition, and Lieber retreated to his study to sort out his own views on slavery. Under the pen name “Tranquillas,” Lieber wrote drafts of several open letters regarding slavery to John C. Calhoun, a politician Lieber admired for his “conservative, analytical mind.”⁴² Calhoun had once explained to Lieber in terms the political philosopher could appreciate, “Do you not agree that slavery contains all that is good in communism, and discards what is bad? Slavery in this, as in so many other cases, solves problems which cannot be solved otherwise.”⁴³ The unsent letters to Calhoun echoed the younger Lieber’s suggestions in *Letters to a Gentleman in Germany*. He urged Calhoun to reform the slave system to more closely resemble that of serfdom, where limited upward mobility was possible through rewarding hard work with certain rights and privileges.⁴⁴

In later letter drafts, Lieber weighed in on the debate over the entrance of California as a free or a slave state. The Southern position was that if slavery did not exist in these new territories, travel with slaves to those parts of the Union would be tantamount to theft, as slaves in free states became free upon entrance. Lieber dismissed this with the argument that slavery was a municipal institution, not a natural condition; it could only be extended by positive legislation.⁴⁵ This view would persist and become more important as the Dred Scott case came to trial several years later, and it was eventually included as part of the Lieber Code. In his letters, Lieber brandished examples from Europe. Throughout history, he warned, slavery had been modified into serfdom as civilization progressed; the South was on the wrong side of history. “It is not the *North* that is against you,” the incensed Lieber wrote to the specter of Calhoun, “It is mankind, it is the world, it is civilization, it is history, it is reason, it is God, that is against slavery.”⁴⁶

Lieber, despite his thundering rhetoric in the unsent letters, maintained his public silence. He

⁴¹ Freidel, *Francis Lieber*, 237-238.

⁴² *Ibid.*, 238.

⁴³ Francis Lieber, *Miscellaneous Writings II*, (Philadelphia: J.B. Lippincott & Co., 1881), 427.

⁴⁴ Freidel, *Francis Lieber*, 239.

⁴⁵ *Ibid.*, 240.

⁴⁶ Tranquillas letters, Lieber papers, quoted in Freidel, *Francis Lieber*, 241.

knew that the letters, if ever published, would have ended his career in South Carolina. He showed them to his Northern friends, including Sumner, but the radical Sumner was unmoved by the Southern professor's writings from a comfortable position within the Palmetto State, and the chill deepened between the two men. Lieber did not write to Sumner for more than a year. Instead, Lieber preoccupied himself with the deteriorating situation in the German states, which by 1848 seemed on the verge of collective revolution against absolutism. Lieber's 18-year-old son, Oscar, went to Berlin fight on behalf of the revolutionaries. Lieber, whose German nationalist sentiments were quickly reignited, was at once proud and anxious, and traveled to Germany to see what place there might be for him in the new government. He was deeply disappointed when the revolution was suppressed in 1849.⁴⁷

His depression deepened when he learned of Sumner's yet increased militancy from their mutual friend George Hillard, who shared a law practice with Sumner. The politically moderate Hillard had moved out of their office, which had become "such a place of rendezvous for abolitionists, free soilists and all other *ists*, that it was quite impossible to think of doing any business there." Upon Lieber's return from Germany, Lieber and Sumner quarreled again in the autumn of 1849, when they were both visiting Henry Wadsworth Longfellow and his family in Cambridge, Massachusetts. Lieber asserted that plantation slaves were treated better than those in the West Indies. Sumner violently disagreed, and for years afterward sent newspaper clippings detailing atrocities visited on slaves in gruesome detail to Lieber. Lieber felt even more attacked, and struggled to cope with the stresses of upholding and benefitting from a system that was morally repugnant to him and remaining friends with a man who would not forgive his association with it. "Does not that unfortunate institution surround me with all its worrying adhesions night and day, day and night, without friends taking my finger and putting it on this and that unpleasant thing?" he wailed.⁴⁸

As the battle over the Compromise of 1850 raged, secessionist sentiment in South Carolina grew

⁴⁷ Freidel, *Francis Lieber*, 242, 248, 249.

⁴⁸ Lieber to Hillard, February 24, 1850, Lieber papers, quoted in Freidel, *Francis Lieber*, 250; Lieber to a friend, Sunday, April 18, 1858, in Perry, *Life and Letters*, 296-297.

rapidly. Nearly the entire student body created and joined a Southern Rights Association.⁴⁹ Lieber sent contributions under a pseudonym to his friend Benjamin Franklin Perry's new newspaper, *The Tri-Weekly Southern Patriot*, which was the only Unionist paper in South Carolina. Simultaneously, he tried to keep the firebrand Sumner out of the Senate, but was growing exhausted trying to mollify both sides. "I detest this whole buseness[sic], and really think that if people must have slaves it is their affair to keep them," he wrote to Hillard.⁵⁰

The situation continued without much progress for several more years. Lieber continued to make acquaintances in the North who would be integral to his future appointment at Columbia. One was George Templeton Strong, a Columbia trustee and son-in-law of Lieber's friend Samuel Ruggles, also a Columbia trustee. Strong thought Lieber "a clever man, but not quite so clever as he thinks himself."⁵¹

In South Carolina, the secessionist fervor died down again; South Carolina accepted the Compromise of 1850 and there seemed little danger of the state making a unilateral decision to proceed with secession. Despite the de-escalation, Lieber was growing fearful that Sumner's constant missives containing abolitionist propaganda were being read by Southern censors. In 1853 he wrote to Sumner begging him to stop sending abolitionist material, but Sumner responded impetuously that Lieber had become an "apologist of slavery". Lieber again stopped responding to Sumner's correspondence. While maintaining his Northern connections and producing perhaps his best philosophical work, *Civil Liberty and Self-Government*, in 1853, Lieber kept an iron in the Southern fire, continuing to ingratiate himself and resurrecting his old ambition to the presidency of South Carolina College. At the end of 1854 it seemed he might have his chance: the president of the college resigned.⁵²

After 20 years of carefully denying abolitionism and avoiding a statement on his feelings regarding slavery, however, the dam holding back Lieber's anti-slavery beliefs from public view at last sprang a

⁴⁹ *The Address of the Southern Rights Association of the South Carolina College* (Columbia, 1851), quoted in Freidel, *Francis Lieber*, 254.

⁵⁰ Lieber to Hillard, April 28, 1851, Lieber papers, quoted in Freidel, *Francis Lieber*, 255.

⁵¹ George Templeton Strong, July 29 1850, *The Diary of George Templeton Strong, 1850-1859*, (New York: The Macmillan Company, 1952), 17.

⁵² Freidel, *Francis Lieber*, 266, 281

leak. Lieber campaigned vociferously in 1854 for the newly open position of President of South Carolina College. He had angled for the position upon his first hiring in 1835 as well, and at the time was dismissed as too young with too heavy a German accent. This time, there was suspicion of his Southern loyalty. Lieber had confided to a friend that he would like to see Republican John C. Fremont become President of the United States, and the trustees caught wind of the remark. The presidency was summarily given to one of Lieber's opponents.⁵³

Indignant, Lieber resigned his post as professor in protest. This only provoked the trustees to publish their reasoning for barring him from the presidency. Lieber wrote to his friend Samuel Ruggles in 1856: "I think I may as well let you know my dear Cross Bones, that an attack has been made upon your unworthy friend for — what do you think? Keeping a mulatto girl? That would be a trifle! For having killed a person? Pshaw! we don't talk of bagatelles here! For high treason? Why, that might recommend me. No, for ABOLITIONISM on the ground of an article published in 1828 in the *Americana* [the Encyclopedia Americana]."⁵⁴ Lieber's Unionism and anti-slavery views could no longer be denied or ignored. The trustees accepted his resignation.

This seeming career crisis had a remarkably liberating effect on Lieber. No longer beholden to a Southern institution, he at last allowed his moral compass to overcome his Unionism. If the price of freedom was a war that split the country, a war there would be. Several months after his resignation he proclaimed to Hillard views of which Sumner would approve: "The victory of Southern bullyism...will inflame and inflate proslavery to such enormity and obscene tyranny over the free states, and madden it in its ungodly course of extending slavery within the U. States and into neighboring countries... Let us part, come what may."⁵⁵

South Carolina institutions disowned him. Several years after Lieber left, the Euphradian Society, a literary society on campus to which John C. Calhoun and Jefferson Davis both belonged, called an extra

⁵³ Freidel, "Lieber, Sumner and Slavery," 90.

⁵⁴ Lieber to Ruggles, Columbia, S.C. May 9, 1856, quoted in Louis Martin Sears, "The Human Side of Francis Lieber," referenced in Miner papers, Box 42.

⁵⁵ Lieber to Hillard, Oct 23, 1856, in Lieber papers, quoted in Freidel, *Francis Lieber*, 290.

meeting to strip Lieber of his honorary membership, erase his name from the rolls, remove his portrait from the hall, and ceremonially hurl his bust through a window in recompense for his aid of abolition.⁵⁶

Despite the acrimonious split, the University of South Carolina (successor of South Carolina College) now claims Lieber as “the most distinguished scholar in the history of the institution.” His Georgian house on campus is now the school admissions office. The university also remembers him as a “federalist-abolitionist,” which the school acknowledges was “unacceptable to the majority of Southerners” at the time. This exaggeration of his anti-slavery work is no doubt now a point of pride at an institution otherwise defined by its other most famous alumnus, John C. Calhoun. By contrast, Columbia University likely believes it needs no such redemption: Lieber’s memory is relegated to the law school, which makes no mention of Lieber’s views regarding slavery at all.⁵⁷

* * *

COLUMBIA II, Columbia College, New York City, 1857.

It was thus that Lieber left the South in January 1857, without a guaranteed job, for New York City, taking his wife and youngest son Norman with him and leaving his son Oscar behind in South Carolina. (His middle son Hamilton, never as intellectual as his father or brothers, had moved to Illinois in 1854 to become a farmer.⁵⁸) In shifting his views to support the more muscular forces of abolitionism, Lieber had lost his relationship with Oscar. Though born in Boston and educated in Germany, Oscar had grown up in the South and wholly accepted its mores, slavery and all.⁵⁹

The Columbia trustee Samuel Ruggles, after years of fielding Lieber’s entreaties for a Northern post, finally found an opportunity for the professor. Charles King, the president of Columbia College at the time, was presiding over a tentative reorganization of the College which required much convincing of

⁵⁶ Edwin Luther Green, *A History of the University of South Carolina* (Columbia, S.C.: The State Company, 1916), 268.

⁵⁷ University of South Carolina, “Lieber College.” <http://www.sc.edu/uscmapp/bldg/lieber.html>.

⁵⁸ John Fabian Witt, *Lincoln’s Code: The Laws of War in American History*, (New York: Free Press, 2012), 180-181.

⁵⁹ Freidel, *Francis Lieber*, 291.

the overwhelmingly traditional trustees. George Templeton Strong, who had also endured a large number of Lieber's requests for patronage at Columbia ("he overdoes the matter and makes himself a little of a bore"), believed Lieber to be eminently qualified, but felt that lobbying for him openly would turn the rest of the board against him.⁶⁰ However, Lieber was by now well-known for his writings in the field of political science, and Strong expressed satisfaction that even his normally slow-moving colleagues on the board seemed to favor Lieber.⁶¹ Lieber, as Strong observed, continued to lobby hard for himself. He even attended church services in February 1857 at Trinity Chapel on Wall Street with Strong and other members of the Columbia board. Strong enjoyed his role as Lieber's social and professional connector: Lieber "expressed great satisfaction at [Minister] Hobart's sermon, so I introduced them after the service. It won't hurt him with the Board of Columbia College to be known as a parishioner of Trinity."⁶²

On March 17, 1857, the board of trustees approved a motion splitting the aging Reverend John McVickar's chair into three professorships, clearing the path for new appointments. On May 18, five months after his arrival in New York, Lieber won a landslide trustee vote for the chair of history and political science. The often-snide Strong was genuinely enthused: "The result is infinitely beyond my hopes...I sacrificed my dinner and went straight down to Cozzens's house, at the corner of Canal Street and Broadway, to gladden Lieber's heart with the news."⁶³ Lieber himself was ecstatic. He purchased a new brownstone at 48 East 34th St, between Madison and 4th Avenue, and wasted no time in moving his library into his new abode.⁶⁴ Columbia's campus, then at 49th and Madison, was conveniently close. He sold his slaves, employing instead two servants from Europe, and threw himself wholeheartedly into New York City life.⁶⁵

⁶⁰ Strong, Feb. 1 1857, *Diary*, 320.

⁶¹ *Ibid.*, Jan. 24 1857, 319.

⁶² *Ibid.*, Feb. 15 1857, *Diary*, 324.

⁶³ *Ibid.*, May 18 1857, *Diary*, 337.

⁶⁴ Lieber moved in August 1. *Diary*, July 28, 1857, in Perry, *Life and Letters*, 295; 1870 Census; Freidel, *Francis Lieber*, 293;

⁶⁵ In Sept. 1859, Oscar Lieber wrote to Francis Lieber, "How negroes have risen in price! What with some carpentering that Henry has added to his accomplishments since you sold him, I am told he would fetch \$1700," Lieber papers, quoted in Moore, *Columbia and Richland County*, Notes 4; Dorfman, "German Scholar in America," 292.

Alas, the problems of the slave South would not stay below the Mason-Dixon line, nor in Lieber's past. Soon after Lieber's arrival, the U.S. Supreme Court decided the case of an enslaved man, Dred Scott, who had been brought to a free state and a free territory by his master, resided there for four years and still been denied emancipation. Lieber was incensed at the court's decision against Scott and freely inveighed against pro-slavery men in the South, who "claim to be the gentleman and chivalry of the 19th century, while they countenance crime, and ruffianism...the dictionaries fail to furnish us with a word to designate this the greatest scandal of history."⁶⁶

Lieber continued to flex his new freedom of speech in letters to his friends over the next several years. "The truest, most radical argument against [slavery] is that African slave-trade is a godless, unchristian crime and infamy, the blot of our race, and renewing it would be high-handed rebellion against civilization, religion — against our God," he wrote. He also clearly no longer needed to carefully consider which arguments would be most palatable: "It is of no use to us that this is a sentimental argument. All great thoughts come from the heart." He more firmly asserted his belief in the fundamental humanity of all persons, declaring court decisions that equated slaves with property to be "the foulest spot in the whole history of law."⁶⁷ He even showed respect for John Brown, the militant abolitionist who hoped to seize arms from the Harper's Ferry armory in Virginia and then march south, freeing slaves and leading them in armed resistance. When Brown was executed, Lieber wrote to his Columbia colleague Henry Drisler, "He died like a man, and Virginia fretted like an old woman...the deed was irrational, but it will be historical."⁶⁸

Lieber settled into Columbia campus life. In his 1858 inaugural lecture at Columbia, a tradition for new faculty, he marveled and delighted in the pace of his new city: "You can have no idea how little a

⁶⁶ Lieber to Hillard, Dec 4, 1857, quoted in Miner papers, Box 4; Lieber to Mittermaier, Nov 28, 1857, in Perry, *Life and Letters*, 296.

Lieber was sure that civilized courts of Europe would agree that the decision was "unlogical, unlawful and degradingly absurd." Lieber to Mittermaier, Sept 16, 1857, quoted in Miner Papers, Box 36.

⁶⁷ Lieber to Wade Hampton, Sept. 5, 1858, in Perry, *Life and Letters*, 300-302; Lieber to Hillard, October 14, 1858, in *Ibid.*, 304.

⁶⁸ Lieber to Drisler, Dec. 4, 1859, in Perry, *Life and Letters*, 307-8.

man can accomplish in a day in New York. It is owing in a great measure to that shape of New York, as if a molasses-pulling girl had stretched it. But I will not complain. I am glad here, glad I am away from the South.”⁶⁹ Lieber cherished his new position, but this did not stop him from trying to avoid the more onerous tasks it involved. Before he even started teaching, he wrote to President King explaining why he should be exempt from teaching freshmen.⁷⁰

Despite this, he quickly won his students’ affection: the graduating class of 1858 asked him to sit for a photograph, “so that each graduate may have a copy. They have singled me out, of all professors,” Lieber proudly told Hillard.⁷¹ The students’ obedience was less forthcoming. Lieber had a reputation for being unable to control his unruly class, and students, sensing weakness, often played tricks on him. The Sunday Mercury reported on his ongoing travails: “On one occasion they went to his rooms and beeswaxed all the busts contained therein. On another occasion they removed these busts and substituted certain domestic utensils in their place. A third time they burned his desk until the trustees took mercy on the dear old man and removed him out of harm’s way.”⁷² At the trustees’ direction, in 1860 he reluctantly began teaching in the newly established law school in addition to his responsibilities at Columbia College, but felt his job was simultaneously growing in workload and declining in prestige. At the students’ request, Lieber’s class was not made a mandatory part of the law degree. His lecture style was apparently none too stimulating, and Lieber’s philosophical subject matter was not part of the “useful and practical knowledge” and legal training the trustees hoped would attract paying students to the new law school.⁷³

Lieber’s new political affiliations were cemented with the election of 1860. The campaign saw a marked Republican effort to convince ‘forty-eighters,’ or Europeans who had participated in the demo-

⁶⁹ Lieber’s inaugural lecture, 1858, in Lieber papers, quoted in Miner papers, Box 4.

⁷⁰ Lieber to Charles King, June 24, 1857, quoted in Freidel, *Francis Lieber*, 294; This behavior continued: although Lieber proclaimed that he’d never read such excellent papers as those produced by the senior class of 1860, he reminded his colleague Henry Drisler, the Latin professor, of Drisler’s promise to “take the sophomores from me on your return.” Lieber to Drisler, June 9, 1860, quoted in Miner papers, Box 4.

⁷¹ Lieber to Hillard, May 22, 1858, quoted in Miner papers, Box 4.

⁷² Sunday Mercury, Nov. 21, 1869, quoted in Miner papers, Box 4.

⁷³ Strong, March 4, 1860 and Nov. 5, 1860, *Diary, 1860-65*, 13; Lieber to Drisler, April 22, 1859, Lieber papers, quoted in Miner papers, Box 42. Lieber complained, “I do not see how I can deliver 2 lectures a week in the university, having found that it is almost impossible for me to lecture in town, on a day when I have business in the college, and every day, you know I have business in the College, except on Tuesday.”

cratic revolutions of 1848, to join the Republican cause. Lieber was impressed with the rhetoric of the young German Carl Schurz on behalf of presidential candidate Abraham Lincoln. On October 18, 1860, Lieber spoke at a pro-Lincoln event for German-Americans. The next day, the New York *Tribune* reported that “Dr. Francis Lieber, one of the most eminent citizens that Germany has furnished to the United States, presided with dignity” over the meeting.⁷⁴

Lieber’s son Oscar, still in South Carolina, saw the news item and was scandalized by his father’s politics and their implications for Oscar's career in the South. Lieber wrote imploringly to explain, hoping to salvage the remaining threads of their relationship (“My dearest boy — And if I knew a more endearing term, that term I would use now to address you”). Lieber confirmed that he did indeed intend to vote for Lincoln. However, he assured his son that “I absolutely belong to no party when I am teaching. I am clearly conscious of this, and all that know my teaching must testify to this. Believe me, it requires under these circumstances some steadiness of soul and a good deal of calmness, perhaps some resolution, to lecture, for instance, on Sovereignty, as I but yesterday concluded the fifth and last lecture on this subject in the Law School.”⁷⁵ Lieber seems to have adhered to his policy of impartiality in the classroom. In the whole year of lectures for 1861, the year that the Civil War broke out, he avoided any direct classroom discussion of slavery, even when lecturing on the American history.⁷⁶

Despite his anxiety on behalf of his son in 1860, Lieber did not fear the impending war. Three days before the opening shots at Fort Sumter, Lieber, Columbia president Charles King and several other professors huddled at the law school, “jubilant” over the news that Northern ships were moving into

⁷⁴ Freidel, *Francis Lieber*, 300; New York *Tribune*, October 19, 1860, 4; Oct. 28, 1860, *Diary*, 55. George Templeton Strong reported that a Mrs. Sally Hampton tsk-tsked about the effect of the meeting on Oscar: “So unfortunate for his son” (in business at Columbia or Charleston), “he was doing so well, and, of course, this ruins all his prospects at the South”!!!

The *Liberator*, March 14, 1862. Lieber was elected vice president (along with at least 20 other people) of New York for a Free Republic at a similar meeting at Cooper Insitute.

⁷⁵ Lieber to Oscar Lieber, Autumn 1860, in Perry, *Life and Letters*, 313-315.

⁷⁶ Canfield, Robert Bage. “Lieber’s Lectures for 1861.” Manuscript, in Robert Bage Canfield Papers, Columbia University Rare Books and Manuscripts Library.

Southern waters and the Union would “not perish without a struggle.”⁷⁷ When the opening shots came, Lieber’s two younger sons, Hamilton and Norman, both joined the Union army. Oscar enlisted in Hampton’s Legion, an elite Confederate unit led by his father’s former student at South Carolina, Wade Hampton. “Behold in me a symbol of civil war,” Lieber wrote to a friend.⁷⁸ There was one consoling consequence of the outbreak of violence: Lieber’s reconciliation with Charles Sumner. Sumner had finally abandoned his pacifist stance and joined Lieber in wholehearted support of the war, and soon the two men were corresponding with their old ferocity.⁷⁹

Lieber was soon unable to ignore the impact of current events in his teaching, though he remained determined to address the war from a theoretical perspective. In October 1861, he began teaching a new course at Columbia College law school, “The Laws and Usages of War,” which covered proper treatment of prisoners, soldiers and noncombatants, and wartime use of underhanded methods like poison and assassination. These lectures would form the basis of the wartime rules for soldiers for which Lieber is most famous. They proved much more popular than his standard pedagogy, and the New York Times reprinted his lectures until the end of the course in March 1862. Also at this time, Lieber began corresponding with members of the Lincoln cabinet, including Attorney General Edward Bates and Secretary of War Edwin Stanton, to urge decisive military action against the rebellious South. “Blow upon Blow ought to be our motto,” he wrote, in the effort to “drive back the enemy.”⁸⁰

It wasn’t long before the war affected Lieber personally. On February 15, 1862, Hamilton Lieber was shot twice in the arm at Fort Donelson in a battle later called the first great strategic Union victory. Hamilton was treated in a field hospital, but lost the arm.⁸¹ Oscar, fighting for the Confederacy, had been sending letters through family in Puerto Rico to assure his parents of his safety. However, in May of

⁷⁷ Strong, April 9, 1861, *Diary*, 117.

⁷⁸ Witt, *Lincoln’s Code*, 180-181.

⁷⁹ *Ibid.*, 179; Lieber to Sumner, May 24, 1861, in Perry, *Life and Letters*, 318. They resumed writing letters on May 24, 1861. On Nov. 29, 1861, Lieber wrote Sumner that it would be “a stride” if Congress declared “that all negroes coming into our lines are free,” presaging one of his stipulations in *General Orders 100*.

⁸⁰ Witt, *Lincoln’s Code*, 228, 181; Lieber to Alexander Dallas Bache, May 6, 1862, Lieber papers; Edward Bates to Lieber, Sept. 2 and 3, 1862, Lieber papers, both quoted in Witt, *Lincoln’s Code*, 180.

⁸¹ Witt, *Lincoln’s Code*, 169, 172-173, 187.

1862, Lieber's worst nightmare came to pass: the brothers Norman and Oscar found themselves fighting on opposite sides of the same battle at Williamsburg. More than 3800 soldiers were killed in the clash.⁸² Norman was only injured, but Oscar was badly wounded and, while being treated for his wounds at Richmond, died of an erysipelas infection.⁸³ It took several months for conclusive information of his son's death to reach New York. When it did, Lieber was deeply saddened, but took little time to grieve before launching himself back into the war effort.

Lieber was gaining importance and acknowledgment within the Lincoln administration. He had quietly helped craft a legal defense of the administration's suspension of habeas corpus in 1861. In July 1861, Lieber had traveled to Washington, D.C. to deliver an honorary degree from Columbia College to Abraham Lincoln himself. After the two had spoken for half an hour, Secretary of State William H. Seward interrupted to admonish the president for not wearing an afternoon coat. Lincoln replied, "I intended to do so, but the Dr. will excuse me, I was not aware it was so late." Upon another chance meeting that summer, Lieber urged Lincoln to "give us at least a little fight" against the South. Lincoln, Lieber reported, "turned away evidently pained at the idea," but the encounter did not seem to affect Lieber's good opinion of Lincoln.⁸⁴

In the summer of 1862, Lincoln appointed Lieber's old friend Halleck to be general-in-chief of the Union army. Halleck, an accomplished military theorist, was tasked with responding to conflicting pronouncements from generals on different parts of the Union line. General David Hunter had issued a proclamation in May of 1862 declaring all slaves in George, Florida and South Carolina "forever free."⁸⁵ Edward Stanley, the wartime governor of North Carolina, was by contrast returning runaway slaves to

⁸² "The Battle of Williamsburg," Civil War Trust, <http://www.civilwar.org/battlefields/williamsburg.html>.

⁸³ Strong, July 1, 1862, *Diary*, 236; Freidel, *Francis Lieber*, 326.

⁸⁴ Lieber to Matilda Lieber, July 26, 1861, Lieber papers, quoted in Witt, *Lincoln's Code*, 181 and Freidel, *Francis Lieber*, 308.

⁸⁵ Series 3 *War of Rebellion: A compilation of the Official Records of the Union and Confederate Armies*, II, (Washington, D.C: Government Printing Office, 1880-1901), 50, quoted in Freidel, *Francis Lieber*, 322, reproduced at "Proclamation by the President," Freedmen & Southern Society Project, University of Maryland, <http://www.freedmen.umd.edu/hunter.htm>.

their masters and abolishing schools for free blacks.⁸⁶ Lieber castigated both officials for overstepping their legal bounds. Attorney General Edward Bates requested Lieber's official opinion on Governor Stanley's actions, and Lieber obliged with an article printed in the *New York Evening Post* in which he declared, when "a negro presents himself to our troops as coming from the enemy and claiming our protection," he was, ipso facto, free.⁸⁷ He discussed the matter with Halleck, and mentioned he was working on a set of guidelines for the treatment of guerrilla combatants along the lines of his Columbia lectures. Halleck, who respected Lieber and was craving a standardized source of legal authority, asked Lieber to send him the treatise, and the resulting *Guerrilla Parties Considered with Reference to the Laws and Usages of War* became the seed of what would grow to be the Lieber Code.⁸⁸

Halleck liked the 16-page essay so much that he ordered 5000 copies immediately for dissemination to the army. Secretary of War Edwin Stanton in August 1862 asked Lieber to submit similar essays on other issues plaguing the war department, including "the military use" of free blacks and enslaved people "come to our armies for support or protection. Lieber obliged, fully sanctioning the inclusion of black soldiers in the army and urging the Union army to make better use of them."⁸⁹

Sensing an opportunity for a project for which he had lobbied for a year, Lieber wrote a formal proposal for the writing and compilation of a full, legally sound code of conduct for soldiers in the field addressing all these issues. In December 1862, a response arrived at Lieber's New York house: a telegraph from Stanton and Halleck requesting that Lieber immediately come to Washington. The trustees of Columbia met in December 1862 and agreed to give Lieber leave from Columbia for a month to answer the summons. Upon arrival, Lieber was formally appointed to a committee tasked with revising the Arti-

⁸⁶ Lieber to George William Childs, July 23, 1863, quoted in Freidel, *Francis Lieber*, 328.

⁸⁷ Lieber, "The Duty of Provisional Governors," *New York Evening Post*, June 20, 1862, quoted in Witt, *Lincoln's Code*, 228.

⁸⁸ Halleck to Lieber, July 30, 1862, quoted in Freidel, *Francis Lieber*, 329; Witt, *Lincoln's Code*, 193; Finkelman, "Lieber and Law of War".

⁸⁹ Lieber to Matilda Lieber, August 7, 1862; Lieber, "A Memoir on the Military Use of Colored persons, free or slave, come to our armies for support or protection, written at the request of Hon. Edwin M. Stanton, Secretary of War"; Lieber, "A Memoir on Rewards for Military Merit and Marks of Distinction in the Army of the United States, chiefly for Privates and Non-Commissioned Officers," both enclosed in Lieber to Halleck, August 10, 11, 1862, all quoted in Freidel, *Francis Lieber*, 331 and Witt, *Lincoln's Code*, 228.

cles of War and writing a code of regulations on the very topic of his Columbia lectures: “the laws and usages of war.”⁹⁰

Lieber was the only civilian on the committee, but by far the most experienced in matters of military law. He set to work on a draft immediately, working through Christmas in Washington and then from his house in New York through January 1863. It was on New Year’s Day 1863, as Lieber worked feverishly, that President Lincoln’s Emancipation Proclamation took effect. The new laws of war would echo and support the proclamation on historical and legal grounds, forming an essential part of its justification. Lieber finished the first draft of the code in the first few weeks of 1863 and, after revisions from Halleck, Lieber’s committee colleagues, and a few others, including Columbia graduate and trustee Hamilton Fish, the finalized code was published in May 1863 as General Orders No. 100: Instructions for the Government of Armies of the United States in the Field.⁹¹

Legal, historical and constitutional scholars have debated the best way to characterize this founding document on the rules of war. It contained prohibitions against torture, cruelty, and “any act of hostility which makes the return to peace unnecessarily difficult,” principles which now tend to be associated with fundamentals of human rights.⁹² It also declared any slaves who reached Union lines “immediately entitled to the rights and privileges of a freeman” and made the moral statement, “To return such person into slavery would amount to enslaving a free person, and neither the United States nor any officer under their authority can enslave a human being.”⁹³ Free black soldiers were expressly declared equal to their white counterparts in article 57, and if any Confederate soldier captured and enslaved a black Union soldier, the punishment would be death.⁹⁴ Lieber was most proud of these articles concerning slavery, and they were also some of the most carefully edited.⁹⁵

⁹⁰ Witt, *Lincoln’s Code*, 229; Strong, Dec. 2, 1862, *Diary*, 276.

⁹¹ Witt, *Lincoln’s Code*, 228-229; Freidel, *Francis Lieber*, 332-334.

⁹² “General Orders No. 100: The Lieber Code: Full Text,” The Avalon Project, Yale Law School, http://avalon.law.yale.edu/19th_century/lieber.asp, Article 16.

⁹³ *Ibid.*, Article 43.

⁹⁴ *Ibid.*, Article 58.

⁹⁵ Witt, *Lincoln’s Code*, 240.

However, as historian John Fabian Witt has argued, the document in effect permitted far more than it outlawed. Its central principle stated that use of force for “military necessity” was allowed, except for “torture, assassination, poison,” and violation of truces, and even these could be legitimated if it was truly important to the war effort.⁹⁶ “To save the country is paramount to all other considerations,” proclaimed Article 5. Lieber himself complicated the idea of a humanitarian code with his assertion, presented in lectures to his Columbia students, that “when war is begun, the best and most humane thing is to carry it on as intensely as possible to as to be through with it as soon as possible.”⁹⁷ Article 29 in the code echoes its author’s beliefs: “The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.”⁹⁸

The provision regarding starvation of enemy combatants exemplifies the code’s sometimes contradictory mix of “moral limits and unforgiving war.”⁹⁹ Article 56 says that “A prisoner of war is subject to no punishment,” including the punishment of starvation, and article 76 mandates “plain and wholesome food, whenever practicable,” for prisoners of war. However, according to article 17, it was lawful to starve a “hostile belligerent, armed or unarmed”, if it led to the speedier subjection of the enemy. This last caveat is present in nearly every article that would otherwise restrict Union activities. “The law of war Lincoln approved in early 1863,” the historian Witt concludes, “was not merely a constraint on the tactics of the Union. It was also a weapon for the achievement of Union war aims.”¹⁰⁰

The Lieber Code remained standard procedure throughout the Spanish-American War and the Philippine-American War. Lieber’s son Norman became a teacher at West Point, and he and his colleagues inspired in their students deep reverence for the code. While the U.S. rules concerning land war were revised in 1914, the revision noted that it preserved the majority of Lieber’s provisions, and his original wording, whenever possible. As late as World War II, soldiers were instructed to heed Lieber’s proc-

⁹⁶ *Ibid.*, 4, 233-234

⁹⁷ *Ibid.*, 235.

⁹⁸ “General Orders,” Article 29.

⁹⁹ Witt, *Lincoln’s Code*, 233.

¹⁰⁰ *Ibid.*, 4.

lamation that the United States was obligated to acknowledge and protect the inhabitants of the nations they occupied.¹⁰¹

Lieber's own life returned to wartime-normal as soon as the bulk of the work on the Lieber Code was finished in February 1863. He was, however, by no means finished with his involvement in the Union cause. The war was dragging on and becoming increasingly unpopular, and the Unionist elite of New York was worried about the effect of public opinion on the army's success. Some New Yorkers, especially those with relatives in the army, began to call for peace negotiations. This, in Lieber's mind, was unconscionable.

On February 13, 1863, Lieber traveled with Charles King and George Templeton Strong to the house of Charles Butler, a lawyer and cofounder of Union Theological Seminary. Their purpose was the organization of a "Loyal Publication Society," to "publish and distribute tracts, papers and journals, of unquestionable loyalty" that would "stimulate a broad national patriotism, and aid in the suppression of the Rebellion" and "in the preservation of the integrity of the Nation, by counteracting the efforts of the advocates of a disgraceful and disintegrating Peace."¹⁰² The Columbia contingent was strong: Charles King was elected president. Lieber was appointed chairman of the publication committee; he would be elected president the following year and remain in the post until the dissolution of the society. William E. Dodge, whose daughter founded Teacher's College, sat on the finance committee. Strong, though not an officer, would remain a member after the inaugural meeting.¹⁰³

Some of the 40 to 50 men present argued that their efforts should not be relegated to essay publication and advocated organizing a "Union League" for general purposes. The assembly ultimately decided to keep the duties of the Loyal Publication Society confined to printing and distribution of documents, but a parallel society was in fact formed around the same time: the Union League Club was to be modeled

¹⁰¹ Freidel, *Francis Lieber*, 341.

¹⁰² "Pamphlets issued by the Loyal Publication Society, from Feb 1, 1863, to Feb 1, 1864. Nos. 1 to 44," (New York: The Loyal Publication Society, 1864); Strong, Feb. 14, 1863, *Diary*, 298; Frank Freidel, "The Loyal Publication Society: A Pro-Union Propaganda Agency," *The Mississippi Valley Historical Review* 26, no.3 (December 1939): 359-76. <http://www.jstor.org/stable/1916465.pdf>

¹⁰³ Freidel, "Loyal Publication Society," 375.

after the Philadelphia League, which had been founded the previous year to promote patriotism and support Abraham Lincoln's policies. Francis Lieber and George Templeton Strong both became members of this organization as well.¹⁰⁴

The new Unionist societies had their work cut out for them. In March of 1863, the draft laws became more stringent, subjecting all 20-to-35-year-old men and all unmarried men under 45 to compulsory military service. Democratic Party leaders and antiwar newspapers had earlier that year fueled fears of white New Yorkers that the Emancipation Proclamation would inundate New York with newly freed slaves from the South. Now, white members of the New York working class protested what they viewed as a destabilization of their own position and a rise in the status of blacks, who were not subject to military service because they were not citizens. On July 13, 1863, riots began, targeting government buildings, black institutions, and black citizens on the streets of New York. One of anti-black mob's targets was the E. 17th St. headquarters of the Union League Club, of which Lieber was a member.¹⁰⁵

Lieber condemned the draft riots as "infamous, fiendish and rascally."¹⁰⁶ He advised the troops keeping order, including his son Hamilton, that the "most important military position" in the city was (coincidentally) the corner of 4th Ave. and 34th St., one block from his house. He solemnly told General Halleck that he patrolled the streets himself for three nights to keep watch, although he admitted that, lacking a weapon, he would not have been very effective against a mob. After the riots, the Union League Club organized the largest relief efforts for black New Yorkers, donating \$40,000 to nearly 2500 riot victims and finding new jobs and homes for those affected.¹⁰⁷

The Loyal Publication Society began publishing essays as individual pamphlets that October. The contents, some of which were reprints of speeches or previously-published essays, varied widely. Some

¹⁰⁴ Strong, Feb 14, 1863, *Diary*, 298; "The Union League of Philadelphia - About," <http://www.unionleague.org/about.php>.

¹⁰⁵ Leslie M. Harris, *In the Shadow of Slavery: African Americans in New York City, 1626-1863*, (University of Chicago Press, 2003), 279-288. Excerpted at <http://www.press.uchicago.edu/Misc/Chicago/317749.html>; Eliakim Littell and Robert S. Littell, *Living Age, Fourth Series, January, February, March. 1870*, (Boston: Littell and Gay, 1870), 130.

¹⁰⁶ Lieber to Halleck, Aug. 2, 1863, in Perry, *Life and Letters*, 335-336.

¹⁰⁷ Harris, *Shadow of Slavery*, 279-288.

were passionate and beseechingly moralistic; some were legalistic in content; many appealed to a sense of Northern outrage over indignities and atrocities committed by the South. Lieber, as publications chairman, wrote three of the 43 essays published in the first year. His first essay attempted to unify Democratic and Republican Northerners against the South with a combination of nationalism, duty to God, and a sense of grand historical and international significance. He told the story of the genesis of mighty America, and forecast its fall if it could not hold together. Slavery in the south, Lieber wrote, began as a primitive solution to economic problems in early America, and ought to have “melted away like snow before the rays of rising civilization.” “There is no room, then, for pacifying arguments with such men in arms against us, against their duty, their country, their civilization,” Lieber wrote. “All that remains for the present is the question, “Who shall be the victor?”¹⁰⁸

The Loyal Publication Society mostly published works by moderate anti-slavery campaigners in its first year; few true abolitionists, who wanted slavery to end immediately for largely moral reasons, managed to make their way into the 1863 table of contents. It wasn't until Lieber became president in February 1864 that the Society began to publish larger numbers of works by abolitionists. Perhaps the choice of Lieber's successor as chair of the publication committee, James McKaye, an abolitionist in the mold of William Lloyd Garrison, explains this.¹⁰⁹ McKaye and Lieber saw to it that the society published pamphlets by John Jay II, a prominent Columbian and ardent abolitionist; Gerrit Smith, one of the six secret financiers of John Brown's raid on Harper's Ferry; and Lieber's old friend Charles Sumner in 1864.¹¹⁰ The number of Columbians represented also increased during Lieber's presidency. James A. Hamilton, Columbia class of 1805 and third son of Alexander Hamilton, wrote “The Constitution Vindicated” for the 50th published pamphlet. His younger brother John C. Hamilton, Columbia class of 1809, had two pamphlets published in 1864. The society also reprinted an 1863 address by Samuel Ruggles, a

¹⁰⁸ “Pamphlets, Feb 1, 1863, to Feb 1, 1864”. Lieber wrote No. 16, “No party now but all for our Country;” No. 29, “Slavery Plantations and the Yeomanry;” and No. 35, “The Arguments of Secessionists.”

¹⁰⁹ Gary T. Lloyd, “Abolitionist James M. McKaye: Champion of Civil Rights,” *Norwich Record: The Alumni Magazine of Norwich University*, Sept. 14, 2014. <http://thenorwichrecord.com/abolitionist-james-m-mckaye-champion-of-civil-rights/>

¹¹⁰ “Pamphlets, Feb 1, 1864, to Feb 1, 1865”.

Columbia trustee and Lieber's early champion.

Lieber continued as president of the Loyal Publication Society for 1865, but the activity of the society flagged as the war came to an end. Only ten pamphlets were published from 1865 to 1866, two of which Lieber wrote himself. On February 27, 1866, Lieber presided over the final annual meeting of the Loyal Publication Society. The small assembled group determined that "the condition of the country no longer calls for the active labors of this Society as an independent organization" and resolved to transfer all printing materials and property to the Union League Club. Lieber gave a moving, prescient and uncharacteristically brief speech to mark the permanent adjournment of the Society. "I feel sad in doing it," he said, but encouraged members to continue to work for the principles the Society stood for. He painted a somewhat bleak, if entirely realistic, future: "There are many roots of slavery left in the ground, though the trunk has been cut down, and these roots must not be allowed to shoot forth new sprouts. The roots themselves must be torn up – a work of the greater difficulty with us, because slavery attached itself in our country to a race." Lieber recognized, with a clarity we now associate with conversations about privilege and race in the 21st century, the systemic racism that had been built into the nation. "A free Negro," he said, "stood always much nearer to the slave, legally and socially, than to the freedmen of the dominant people." This was a different Lieber from the young ambitious man who, in 1834, felt that a "sudden emancipation in the South" would overturn society as he knew it, and hoped it never came to pass.¹¹¹

The final address, in its plain language and brevity, showed only a shadow of the fiery reformer's zeal. Perhaps this was to be expected from an aging professor at the end of a civil war that had killed one of his sons and maimed the other. In addition, the April 15, 1865 assassination of Abraham Lincoln, whom Lieber deeply admired, had profoundly affected the professor. In the days after the president's death, he penned a moving resolution on behalf of the Columbia trustees and faculty venerating Lincoln's "honesty and tenacity of purpose, pure and disinterested patriotism," and "rare combination of justice and humanity." Lincoln, Lieber felt sure, would be "held in reverence as long as history shall last, by all in

¹¹¹ "Pamphlets, Feb 1, 1864, to Feb 1, 1865", 39.

every land, who love freedom and honor humanity.” The faculty committee decided to wear badges of mourning for sixty days in honor of the fallen president. Any of these might explain a sadder, less energetic speech. To make matters worse, Lieber had also been dealt a career blow in mid-1865 from which he never truly recovered.¹¹²

Frederick A. P. Barnard, former Chancellor of the University of Mississippi, replaced Lieber’s elderly friend Charles King as president of Columbia in 1864. Lieber and Barnard had never gotten along: Lieber was suspicious of Barnard’s Unionist credentials, with reason. Barnard, like Lieber, had owned slaves, but unlike Lieber, he had not stayed silent on slavery: he avowed the constitutionality of slavery and wrote in favor of the Confederacy as late as a month after the first shots at Fort Sumter in 1861. When all his students left to join the Confederate army, he had fled to the north and, upon reaching Union lines, he had penned an open letter to President Abraham Lincoln asserting his loyalty to the Union. Barnard thus rehabilitated himself enough to become a replacement for the anti-slavery Charles King at Columbia. In his inaugural address, Barnard had insulted German theological academies, calling them “schools of irreligion,” to Lieber’s chagrin. Barnard also failed to acknowledge the prestige Lieber brought to Columbia through his work on the Lieber Code, and Lieber’s ego was bruised.¹¹³

Barnard felt similarly ill will toward Lieber, and began criticizing him almost immediately after taking office. In 1865, Barnard wrote to Hamilton Fish that “The instruction of History is substantially thrown away.” The same students that Lieber complained constantly misbehaved gave no other professors trouble, and Barnard felt Lieber’s teaching left much to be desired: “Lieber tells the young men as much as he can tell them in an hour on Monday and then on Friday he meets them and sits out the hour silent while they tell him back what he told them on Monday.” George Templeton Strong confirmed Barnard’s evaluation of Lieber’s pedagogical style. “The discipline of his lecture room is abominable...he has no tact at all,” he acknowledged, and his lectures were “bad, dreamy and maundering.” But Lieber, Strong felt, was not the problem; the College as a whole lacked discipline. “It is quite certain that two or three

¹¹² Trustee Minutes, April 17, 1865, quoted in Miner papers, Box 10, Folder: Columbia College - The Civil War.

¹¹³ Dorfman and Tugwell, *Early American Policy*, 284-85.

sentences of dismissal would have made this cowardly crew of undergraduate Fifth Avenue blackguard boys as still as mice," but Barnard did not hear a single disciplinary case in his first year as president.¹¹⁴

Barnard's criticism of Lieber was not purely spiteful. He had plans for the establishment of a School of Mines at Columbia, today the School of Engineering and Applied Science, and Lieber collected \$4000 per year for four hours of teaching per week. Barnard saw an opportunity to free up funds for his new project and rid the College of Lieber in one stroke.¹¹⁵ On June 5, 1865, he and trustee Benjamin Haight presented a formal motion to abolish Lieber's professorship. Strong was shocked, and visited Lieber to tell him of the conspiracy against him, expecting to meet with indignation and plans for immediate efforts to keep his position. Instead, Lieber wearily said he knew the move was wholly political, but he was too old for lobbying. "He is more phlegmatic than I expected to find him," Strong wrote.¹¹⁶ The trustees discussed Lieber's fate at a meeting on June 19, 1865. After Fish, Strong, Ruggles and King all spoke on Lieber's behalf, the trustees decided on a compromise: Lieber would continue to receive his salary of \$4000, but would, come September, only teach at the law school as the professor of constitutional history and public law.¹¹⁷

Reconstruction, and an impeachment trial for President Johnson, were beginning to take shape during this period, and Lieber corresponded extensively in the three years following the war with Sumner and other influential Radical Republicans in support of both. Before his banishment to the law school in 1865, Lieber had penned the New York Union League's recommendations on Reconstruction, but emphatically did not include universal black suffrage. He argued with Sumner over this point: first Lieber advocated leaving the issue up to the states, then he suggested a universal literacy test. While literacy tests are now associated with preventing minority citizens from voting, at this point in history Lieber's motiva-

¹¹⁴ George Templeton Strong, June 8, 1865, *The Diary of George Templeton Strong: 1865-1875*, (New York: The Macmillan Company, 1952), 6.

¹¹⁵ Barnard to Fish, March 23, 1865, Columbiana Collection, Columbia University, quoted in Miner papers, box 4; Dorfman and Tugwell, *Early American Policy*, 304-306.

¹¹⁶ Strong, June 8, 9, 12, 17 and 19, 1865, *Diary 1865-1875*, 6-10; Minutes of the Board of Trustees, Columbia College, June 5, 1865, 61:140, Columbiana Collection, quoted in Freidel, *Francis Lieber*, 367.

¹¹⁷ Strong, June 19, 1865, *Diary 1865-1875*, 9. The trustees voted to postpone the final decision for several months, "a motion almost always unanimously carried in this board," according to Strong, but the conclusion was inevitable.

tion was more elitist than racist: he was worried that uneducated voters of all races would overwhelm the intellectually superior government ideal he cherished. To ensure that qualified black Americans could safely vote, he supported amending the constitution to explicitly protect black citizenship and reducing Congressional representation for states that failed to register sufficient percentages of their nonwhite voters. The text of the Fourteenth Amendment actually includes this latter principle, but it has never been enforced.¹¹⁸

In the midst of the exciting legal and governmental maneuvering that Lieber loved, he became reconciled to his diminished professorship at Columbia Law with only slight bitterness. The whole business had been a sorry “reward for all I have tried to do for the country,” he told Sumner, but he found he preferred exclusive affiliation with the law school.¹¹⁹ There remained constant tension with respect to his dedication to teaching. In 1868, Strong again lamented the dead weight Lieber represented. “His last year's work consisted of dispensing scraps from his memory and his note books to *six* of the graduating class, who chose to attend his "optional" course,” Strong wrote somewhat incredulously. “I don't believe he gave the School forty dollars’ worth of work. We shall have to throw him over and make his salary useful.” This threat never came to pass. Lieber managed to corral enough interest in his public lectures for 1868 that Strong dropped the idea.¹²⁰

As a nearly 70-year-old professor, Lieber began to reflect on his service to the government and the possibility of securing a diplomatic post that would allow him to retire in Europe with dignity. He made this ambition known to his friends, and in 1870, Secretary of State Hamilton Fish managed to secure a foreign post for him: umpire of the United States and Mexican Claims Commission. This was a far cry from the plush European ambassadorship that Lieber may have envisioned, but he nevertheless threw

¹¹⁸ Freidel, *Francis Lieber*, 376-378.

¹¹⁹ Dorfman and Tugwell, *Early American Policy*, 304-306; Lieber to Sumner, July, 1865, quoted in Freidel, *Francis Lieber*, 366.

¹²⁰ Strong, May 13, 1868 and December 5, 1868, *Diary 1865-1875*, 207 and 235.

himself into the work of settling claims from the Mexican-American War with renewed zeal.¹²¹

Lieber kept his position in the law school, and expected his diplomatic posting to last until 1872. At that point, he planned to resign from both Columbia and the State department and finally return with “modest triumphal” flair to Europe. He submitted his resignation at Columbia in early 1871 in anticipation of this move. However, later that year he wrote to friends at Columbia that his work in Mexico might extend later into 1872, and requested that the trustees postpone his resignation until 1873. At a meeting on May 20, 1872, the trustees granted his request, and the aging Samuel Ruggles, Lieber’s original champion at Columbia, again showed his support for the scholar by insisting that Lieber compile his lectures into a textbook so that his ideas might survive in the Columbia curriculum. (George Templeton Strong, who had grown more and more frustrated with Lieber, snapped that Lieber was of course too lazy to ever do so, and he was unfortunately correct: no Lieber textbook was ever compiled or published.)¹²²

However, Lieber’s resignation would never take effect. On October 2, 1872, the first day of the new school term, Lieber collapsed while relaxing quietly at home in New York with his wife Matilda and died that night. Strong was surprised, as Lieber had not been ill at all before this, but Ruggles was distraught. Later that month, Ruggles fell ill and was bedridden with paralysis; Strong ascribed his father-in-law’s decline to the deaths of Lieber and Ruggles’ friend Secretary of State William H. Seward within eight days of each other. “He always took such events so hard,” Strong lamented.¹²³

The trustees drew up a resolution eulogizing Lieber and commending him for his superior service to the school. Although the resolution was first debated on November 4, 1872, its immediate passage was prevented by William Betts, Columbia graduate, trustee and James Kent’s successor at the law school. Betts, a Copperhead sympathizer who had pushed for a peace agreement with the South during the war, objected to the passages lauding Lieber for his deep nationalism and work for the Union. “I never knew

¹²¹ Lieber to Fish, April 23, 1869, in Fish papers, Library of Congress, quoted in Dorfman and Tugwell, *Early American Policy*, 307.

¹²² Dorfman and Tugwell, *Early American Policy*, 308; Strong, May 20, 1872, *Diary, 1865-1875*, 427.

¹²³ Strong, Oct 2, 5, 22, Nov 4, 1872, *Diary*, 441-442, 447, 451; *Annual Report of the Regents, Volume 87*, (New York: University of the State of New York, 1874), 30.

resolutions of this kind to be objected to before,” Strong wrote with some bewilderment. Ruggles, who was recuperating, was reportedly quite agitated over this slight against his deceased friend. It was not until February 3, 1873 that the law school issued a statement on the “severe loss” of Lieber's death, praising his devotion to the nation and to Christianity, but without mention of the Lieber Code or his role in the Loyal Publication Society.

His memory was better honored by others’ obituaries, which occasionally dwelt on Lieber’s faults but overall painted a portrait of a talented, committed, and accomplished scholar, jurist and political philosopher. George Templeton Strong wrote warmly, “With all his foibles of egotism and vanity, he was a learned, thoughtful man whom it would be very hard to replace. His familiarity with details of modern history was wonderful, and so was his grasp of the laws that underlie them...Everyone has some good story to tell about his weaknesses, but comparatively few will remember his strength, his erudition, and his earnest patriotism as a naturalized American.”¹²⁴ In 1874, the report of the Columbia trustees to the New York State board of regents lauded Lieber’s “labors in the rarely cultivated studies of International law, Civil Liberty and every department of political science” and the “general celebrity” that came with these achievements.

Lieber’s former students were integral in reviving and burnishing Lieber’s Columbia legacy, especially as a teacher. John Howard van Amringe, CC 1860 and later the first Dean of the newly separate Columbia College, recalled in an 1894 address to alumni the “privilege of sitting at the feet of the great philosophic historian, Francis Lieber,” and how Lieber’s eyes would light up when asked to tell stories about his participation in the Battle of Waterloo. Oscar Strauss, CC 1871, Law 1873, who served as the U.S. ambassador to Turkey, secretary of Commerce and Labor under President Theodore Roosevelt and the Progressive candidate for governor of New York in 1912 said in 1922 of his law professor, “Usually egotism and real merit do not co-ordinate, but negate one another; Lieber was an exception. He combined both in a marked degree, sometimes in a manner that afforded amusement to his students...he was apt to

¹²⁴ Strong, Oct 2, 1872, *Diary, 1865-1875*, 441.

lose himself in the vast field of his philosophical and historical knowledge. As his course was optional, those who came to listen came to learn, and we received a larger view of the function of law in civil society than we derived from all our studies in municipal law.”¹²⁵

It is somewhat surprising that no Columbia remembrance dwelled on Lieber’s relationship with slavery (even the laudable parts), or upon his leadership in the Union League and Loyal Publication Society. Ironically, South Carolina College, which defenestrated Lieber in effigy and all but forced him to resign, is the institution that now claims a connection with Lieber’s anti-slavery efforts.¹²⁶ It is true that South Carolina changed Lieber. His views on the differences between races and the relationship between oppressors and the oppressed, so confidently stated in 1834 with so little personal experience, were irrevocably altered by the time he left South Carolina. As a slaveowner, an observer of slave speech and life, and a member of the Southern elite, he was forced to confront the cognitive dissonance between the realities of slavery and the ideals of political philosophy, national unity and strong democratic institutions that he held so dear. The Lieber who emerged from the slave South into life at Columbia during the Civil War had a personal connection to, if not always a sympathy for, the lived experiences of subjugated peoples. This connection, and his understanding of life on both sides of the Mason-Dixon line, indubitably influenced his guidelines for the ethical treatment of human beings in the Civil War.

Columbia president Nicholas Murray Butler said of Lieber in the 1920s, “Probably history was never better taught to college students than by Francis Lieber. Through Lieber, Columbia offered the soundest and clearest teaching ever given of the fundamental principles of civil liberty.” This is all the more significant when we consider Lieber’s personal relationship with the single most severe affront to civil liberty in American history.

¹²⁵ Oscar S. Strauss, “Glimpses of Columbia a Half Century Ago,” in AN, XIV, No. 11 (Dec 15, 1922), quoted in Miner papers, box 4; “Prof. Van Amringe’s Address before the Alumni Association on May 4, 1894,” *Columbia Spectator*, 18 May, 1894, 66-70.

¹²⁶ Green, *History*, 268; “Lieber College,” University of South Carolina, <http://www.sc.edu/uscmmap/bldg/lieber.html>.

A Note on Footnotes:

Where letters and correspondence are cited, they are nearly all from the Lieber Papers at Huntington Library in San Marino, Calif. I have followed my predecessor Frank Freidel's lead and left out repeated references to this collection: if there is a citation without a reference to a published copy, the document resides in the Lieber Papers.

Appendix:

An accompanying map of the most important places in Lieber's life in New York City is available at

<https://www.google.com/maps/d/edit?mid=zFQn2PfgT2Ss.kcGFDtB6ovGU>.