

Die Juristische Methodenlehre von Francis Lieber (1800-1872)

Posted on 24. Februar 2025 by Klaus F. Röhl

Die deutsche Rechtswissenschaft hat *Francis Lieber* bisher nicht wahrgenommen, wiewohl der Staatsrechtler *Hugo Preuß* ihn 1886 als »Bürger zweier Welten«[\[1\]](#) gewürdigt hatte. Aber es lohnt sich, *Lieber* zu entdecken, denn er hat fast gleichzeitig mit *Schleiermacher*[\[2\]](#) und *Savigny*[\[3\]](#) eine »Hermeneutik« verfasst, die sich wie ein Lehrbuch der Juristischen Methodenlehre liest.[\[4\]](#) Nur ist sie moderner als das [Methodenkapitel Savignys](#). Dass seine Methodenlehre hierzulande noch gar nicht und auch in den USA kaum rezipiert worden, liegt vielleicht daran, dass man *Lieber* in erster Linie als Enzyklopädisten und Politikwissenschaftler wahrgenommen hat. Vor allem aber hat man ihn als Verfasser der »Political Ethic« von 1838 in Erinnerung, die 1863 als *General Orders 100* durch Präsident *Lincoln* zum amerikanischen Militärgesetzbuch wurde.[\[5\]](#) Inhaltlich wurde es bald von anderen Staaten übernommen und später zur Grundlage der Haager Konventionen von 1899 und 1907.

Nachtrag vom 13. 3. 2025: Der Nachtrag gehört hier an den Anfang, denn ich bin erst heute auf den Aufsatz von *Stephan Meder* aufmerksam geworden, der diesen und den folgenden Eintrag überflüssig macht:

***Stephan Meder*, Interpretation und Konstruktion. Zur juristischen Hermeneutik von Francis Lieber (1800 - 1872), JZ 2012, 529-584.**

Dieser Aufsatz hat allerdings - ganz zu Unrecht - kein großes Echo gefunden und es insbesondere nicht geschafft, die Hermeneutik *Liebers* im deutschsprachigen Raum bekannt zu machen.

Ich will mich auf Rsozblog nur mit der Methodenlehre befassen, die *Lieber* 1839 unter dem Titel **Legal and Political Hermeneutics, Or, Principles of Interpretation and Construction in Law and Politics** erstmals veröffentlichte. Aber die Biografie ist so spannend, dass ich nicht bloß auf [Wikipedia](#) und ältere im Internet verfügbare Biografien[\[6\]](#) verweisen will, sondern heute nur ausführlich die einschlägigen Passagen aus der Lobrede des Präsidenten auf der Jahrestagung der

American Society of International Law im April 1913 zitiere:

»He was born in Berlin on the 18th of March, 1800. His childhood was passed in those distressful times when the declaration of the rights of man and the great upheaval of the French Revolution had inspired through out the continent of Europe a conception of popular liberty and awakened a strong desire to attain it, while the people of Prussia were held in the strictest subjection to an autocratic government of inveterate and uncompromising traditions. In the meantime foreign conquest, with the object lessons of Jena and Friedland and the Confederation of the Rhine, threatened the destruction of national independence; and love of country urged Germans to the support of a government which the love of liberty urged them to condemn. It was one of the rare periods in which political ideas force themselves into the thought and feeling of every intelligent life, and, alongside with the struggle for subsistence, the average man finds himself driven by a sense of necessity into a struggle for liberty, opportunity, peace, order, security for life and property – things which in ordinary times he vaguely assumes to come by nature like the air he breathes. So the early ideas of the child were filled with deep impressions of the public life of the time. He remembered the entry of Napoleon into Berlin after Jena. He remembered the humiliation of the peace of Tilsit. He remembered Schill, the defender of Colberg, and Stein, and Scharnhorst. He was a disciple of Doctor Jahn, the manual trainer of German patriotism. At fifteen, after the escape from Elba, he enlisted in the Colberg regiment and fought under Blucher at Waterloo. He was seriously wounded in the Battle of Namur and had the strange and vital discipline of lying long on the battlefield in expectation of death. He was a member of patriotic societies and was arrested in his nineteenth year, and imprisoned four months on suspicion of dangerous political designs. He was excluded from membership in the German universities, except Jena, where he received his degree of Doctor of Philosophy in 1820. At twenty-one he made his way to Greece with a company of other young Germans, inspired, by a generous enthusiasm for liberty, to an unavailing attempt to aid in the Greek War of Independence. Returning penniless from Greece he found his way to Rome, became a tutor in the family of Barthold George Niebuhr, then Prussian Ambassador, and there he won the confidence and life-long friendship of that great historian whose influence in familiar intercourse both increased the learning and calmed and sobered the judgment of the impetuous youth. Returning to Prussia, he was again arrested and imprisoned for nearly a year upon charges of disaffection to the

government. Released through the intercession of Niebuhr, he went to England, and after a year's hard struggle there, he came, in 1827, to the United States and to Boston. Seeking employment he found it in taking charge of the Boston Gymnasium. Through Niebuhr's good offices he became the American correspondent of a group of German newspapers. He devised a plan for the publication of an encyclopedia, and for this he secured a distinguished list of contributors and associates. He became its editor, and in 1829 the publication of the Encyclopedia Americana was begun. It was a distinct success. Lieber's connection with it not only forced him to a broad and accurate knowledge of American life, but brought him in contact with a great range of leaders of American thought and opinion, and this association gave him an intimate knowledge of American social conditions and public affairs. Bancroft, and Hilliard, and Everett, and Story, and Nicholas Biddle, and Charles Sumner were among his friends. In June, 1835, he was made Professor of History and Political Economy in South Carolina College, and for twenty-two years he held that chair, until, in 1857, he was called to Columbia College to be Professor of Modern History, Political Science. International Law, Civil and Common Law. His connection with Columbia and his residence in New York continued until his death in October, 1872. In the meantime, to the service as adviser to the government, which I have already described, he added the classification and arrangement of the Confederate archives in the office of the War Department, and long served the archives in the office of the War Department, and long served as umpire under the Mexican Claims Commission of July 4, 1868.

Lieber himself has said that his life had been made up of many geological layers. The transition from his adventurous youth to the life of an American college professor did indeed carry him from igneous to sedimentary conditions. Under the new conditions, however, his surpassing energy and capacity for application found exercise in authorship. His work on Political Ethics, published in 1838, and that on Civil Liberty and Self-Government, published in 1853, gave him high rank among writers upon the philosophy of government.«

Vielleicht sollte ich noch hinzufügen, dass auch der Rechtsphilosoph *John Austin* (1790-1859) zu *Liebers* Freundeskreis gehörte.

Die [Fortsetzung dieses Eintrags](#) soll also *Liebers* Methodenlehre gelten.

[1] *Hugo Preuß, Franz Lieber, ein Bürger zweier Welten*, Berlin, 1886.

[2] *Friedrich Schleiermacher, Hermeneutik und Kritik* [1838], hg. von *Manfred Frank*, 9. Aufl. 2011. Aus der Sekundärliteratur *Jan Rohls*, Schleiermachers Hermeneutik, in: *Andreas Arndt/Jörg Dierken* (Hg.), *Friedrich Schleiermachers Hermeneutik*, 2016, 27-55.

[3] *Friedrich Carl von Savigny, System des heutigen römischen Rechts*, Bd. 1, 1840, dort das IV. Kapitel von Buch I = §§ 32-51 = S. 206-330. Aus der Sekundärliteratur *Joachim Rückert*, Methode und Zivilrecht beim Klassiker Savigny (1779-1861), in: *ders./Ralf Seinecke*, *Methodik des Zivilrechts – von Savigny bis Teubner*, 4. Aufl. 2024, 59-103.

[4] *Francis Lieber, Legal and Political Hermeneutics, Or, Principles of Interpretation and and Construction in Law and Politics*, Boston, 1839 (3. Aufl. postum 1880). Ich zitiere nach der im Internet Archive verfügbaren 1. Aufl. von 1839.

[5] 50 Jahre später widmete *Elihu Root* ihm dafür die Elihu Root, Presidential Address auf dem 7. Annual Meeting der American Society of International Law (Francis Lieber, *American Journal of International Law*, 1913 453-469).

[6] *Frank Freidel*, *Francis Lieber. Nineteenth-Century Liberal*, 1967; *Lewis R. Harley*, *Francis Lieber. His Life and Political Philosophy*, 1899; *Thomas Sergeant Perry* (Hg.), *Life and Letters of Francis Lieber*, 1882. 2005 hat die University of South Carolina *Lieber* als ihr *most illustrious faculty member* in einem Sammelband mit 15 Beiträgen gewürdigt: *Charles R. Mack/Henry H. Lesesne* (Hg.), *Francis Lieber and the Culture of the Mind*, 2005.

Ähnliche Themen

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