

RICHARD CÁNDIDA SMITH  
DEPARTMENT OF HISTORY  
UNIVERSITY OF CALIFORNIA, BERKELEY  
CANDIDAS@BERKELEY.EDU

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***IMAGINING UNIVERSAL JUSTICE:  
RESPONSIBILITY AND ACCOUNTABILITY,  
TWO VIEWS FROM THE AMERICAS***

“Universal justice” is a goal that none of us here this evening will ever experience. Practical programs, such as General Order No. 100, a legal code issued by the United States Army in 1863 to guide the conduct of its officers and soldiers in combat, narrow but never close the gap between practice and ideal. Yet, this effort, made in the midst of the U.S. Civil War, despite all its imperfections had immediate effects for the whole world. European governments and military staff closely studied the document. Some thought it naive, but with prompting from Henri Dunant, the founder of the Red Cross, General Order No. 100 provided the starting point for the first Geneva convention of 1864. Within a year of its initial adoption in the United States, the world community accepted the basic principle that warfare should be incorporated into the rule of law. Three decades later, the Hague treaty of 1898 establishing the International Court of Justice incorporated much of the code verbatim (at least in the English text), that is to say the version revised after the conclusion of the Civil War and its author had a chance to review war

records and determine how well the articles addressed the real-life situations military and civilian courts had to address.

The author of General Order No. 100 was the noted legal and political philosopher Francis Lieber, a student of Hegel's who had come to the United States from Germany in 1827. Lieber's objective was a permanent body of law governing the conduct of U.S. military forces. Like any legal code, it has been modified many times over the last 160 years. The original 157 articles have expanded to fill multiple volumes currently known as the Department of Defense Laws of War Manual. As we shall see, some of the original provisions permitted behavior now prohibited. General Order No. 100 was a practical document, not a statement of overarching moral principles. It did not address just war doctrines, not even obliquely, much less questions of good and evil in activity that by nature involves terrible acts of violence. Lieber proposed something simpler: a precise statement of what behavior is permitted under what circumstances and what is forbidden, along with appropriate penalties, all categories open to on-going negotiation and revision. *Good* and *evil* are open-ended meta-categories good for debate and reflection. *Permitted* and *prohibited* are finite and practical. They help a court to know what to do when facing a defendant charged with violating such-and-such laws of war.

General Order No. 100 was issued in conjunction with Lincoln's Emancipation Proclamation abolishing slavery in Confederate-controlled territories. The public in both the Union and the Confederacy understood that extending the rule of law to warfare and abolishing slavery were intimately linked projects, certainly in terms of underlying political philosophy but also in terms of Lincoln's strategic objectives in the war. In general, Lieber's code prohibited confiscation of the private property of civilians, with limited exceptions for civilians who

actively assisted enemy guerrilla forces and snipers. General Order No. 100 stated categorically that slaves were not private property and required U.S. Army units to emancipate slaves wherever encountered and then to assure their protection until brought to safety.

Lieber had taken nearly two years to draft his code, which went into effect in mid-1863. He adopted an empirical approach reviewing the history of military practices in Europe in order to develop a body of precedent that a legal code could rationalize into consistent and predictable expectations. He introduced several modern innovations, among them a flat declaration that there be no difference in treatment of soldiers or prisoners of war based on race, national origin, or religion. Another innovation was an absolute prohibition on the sacking of enemy-held towns, and under no circumstances were soldiers to take either private or public property as war booty. These limitations had previously been at the discretion of commanding officers.

A fundamental test of whether law could regulate war came quickly with the Confederate response to the Union Army's first deployment of black soldiers, Confederate President Jefferson Davis proclaimed that Lincoln's arming of black men was a war crime because the North was encouraging "savages" to massacre whites and their families. The Confederate Secretary of War determined that "summary execution must therefore be inflicted" on captured black soldiers and their white commanding officers. As news of mass executions of Union soldiers spread, the public in the North demanded that President Lincoln do something to stop it. The traditional remedy would be reprisal executions of Confederate prisoners, who were considered hostages for the good behavior of their government. Reprisal execution of prisoners was permitted in Lieber's code, because it had long been a recognized practice of war in Europe, but other articles in the code stated that captured soldiers could be tried and condemned only for crimes that a

court of law determined they had personally committed. The contradiction between provisions in the code is typical of all sorts of legal codes. Protests against executing Confederate prisoners spread across the country. Many of those involved were Confederate sympathizers and racists, but there were also many humanitarians who did not feel General Order No. 100 went far enough to end the evils of war, as well as religious opponents of the death penalty who had already succeeded in abolishing the death penalty in a third of northern states. Weeks of intense debate followed in newspapers, public meetings, and legislative chambers. Resolutions were passed, pro and con, in every part of the Union and sent to Washington. Public opinion was closely divided on the question of reprisals as a means for protecting Union troops.

To bring closure to a fractious and emotional debate, Lincoln exercised his political and executive authority by issuing an Order of Retaliation, affirming that for every U.S. soldier killed in violation of the laws of war codified in General Orders No. 100, a rebel soldier held as a prisoner of war would be executed. Lincoln declared, "It is the duty of every government to give protection to its citizens, of whatever class, color, or condition, and especially to those who are duly organized as soldiers in the public service." In fact, no Confederate soldiers held by the Union Army were ever executed except those tried and convicted for crimes that a court determined the evidence proved personal guilt. Lincoln personally agreed with the proposition that killing a person for crimes others committed was immoral, even if legal. The threat of reprisals remained in force, however. After a particularly brutal and premeditated massacre in Tennessee where the Confederate army murdered hundreds of Union soldiers after they had surrendered, Lincoln had the Union Army segregate three hundred Confederate officers who were listed by name and rank and formally reclassified from "prisoners of war" to "hostages."

Lincoln communicated the list of names to Confederate authorities with a warning that this group of generally notable and prominent men would be executed if there were another massacre of Union soldiers. He specified that the Confederates must refrain from its policy of killing black Union soldiers, or the hostages would be executed. The Confederate government rejected the threat and claimed that Lincoln's policy was a war crime. However, massacres largely ceased, at least those clearly based on official decisions. Instead, the policy changed to declare captured black soldiers "slaves," whose labor would be used to build Confederate fortifications. Lincoln protested that the laws and customs of war in Europe no longer permitted the enslavement of captured persons, hence the policy was a crime against "the civilization of the age." The Union army, operating under the authority of Lincoln's Order of Retaliation, required captured southern soldiers to do comparable work. The Confederates continued the policy of reenslaving captured black soldiers but ceased to use black prisoners of war at the front.

Lincoln's policy effectively became one of deterrence rather than retaliation. After the war, when General Order No. 100 was revised to reflect what had been learned in the course of the war, reprisals were prohibited. Lincoln had also declared that the Union considered Confederate officers and soldiers bound by General Order No. 100. They were to be tried and punished for acts in contravention of the laws the federal government established for war. General Order No. 100 did provide the basis for the trials of a thousand Confederate officers and enlisted men for war crimes, some trials conducted in the course of the war, most after its conclusion. In these trials, the courts ruled not to allow the "I was following orders" defense. The defendants should have known that their orders were illegal and/or unjust. Captain Heinrich Wirz, the commander of the infamous Andersonville prison camp in Georgia were 15,000 Union

prisoners of war died from starvation and mistreatment, was sentenced to death because his numerous protests to the Confederate government proved that he knew well that the orders given him regarding the treatment of prisoners were inhuman, immoral, and *should* be prohibited in any civilized nation. In his defense, Wirz kept repeating until the day of his execution, “I followed the orders given me.” The court-martial tribunal and the judges who heard his appeals declared that Wirtz as an officer had an obligation to obey orders that he believed foolish, but as an officer and as a citizen of a free republic he was duty-bound to refuse orders he knew to be evil.

There would have been many more trials, but in 1866, the process was cut short when Lincoln’s successor as president, Andrew Johnson, issued a blanket pardon forgiving combatants from both sides for any crimes they may have committed in the course of combat. Johnson’s justification was the need to “heal the wounds” and reunite the country, but the pursuit of justice had become so politicized that to many, and not only the losers, justice had been reduced to a pretext for revenge. This was an issue that after the war Francis Lieber grappled with as he revised his code. Lieber concluded that losers accusing victors of tyranny was inescapable. Few court cases end the dispute at issue, or the emotions and interests involved. Court decisions determine only what society as a whole will do in relation to that dispute. The tension between collective engagement and personal passion was inescapable. How societies managed that tension varied widely in ways indicative of competing values and priorities.

Responses to General Order No. 100 illustrated for Lieber the differences in the kinds of republic the North and the South had built since separation from England. In the north, politics involved hundreds of thousands of farmers, mechanics, and merchants channeling their interests

into thousands of voluntary societies. These groups were raucous places, where all sorts of feelings and ideas were expressed, but in working together to achieve common aims, northerners learned to think in social terms requiring codified protocols. Politeness and respect for following the rules tamed the disorder ego and private interest introduced. Northerners learned that by submerging personal desires into collectively shared goals they multiplied their impact. The institutionalization of civil society forms the main topic of his magnum opus, the two-volume *On Civil Liberty and Self-Government*, first published in 1853.

In the South, aside from the church, civil society was weak, and the church avoided most public matters. Instead in each community and state, several dozen wealthy slave-owners dominated the economy, politics, and social life. Their preferences determined public opinion. As “democrats” they said they believed in rule of law, but in practice, they had personally set the law for the men and women they owned. As slaveholders, they were effectively above all law except that provided by their will and their conscience. The everyday practice of determining justice for others with only nominal accountability made them dangerous and disruptive figures. The absolute sovereignty they had in their supposedly private affairs flowed unimpeded into their actions in public matters, including a romantic turn towards imagining themselves as an “aristocracy,” even though the only foundation for their power was property, typically heavily mortgaged. As citizens and public leaders, slaveholders controlled all the institutions. Readily turning to violence to impose their dictates on their slaves, the southern aristocracy chose violence over compromise when political opponents thwarted their will. Standing above the law, slave-owners hollowed out all forms of democratic life. As a result public debate in the South was limited and shallow, often merely a theatrical performance celebrating the victory of the

wealthiest or the most ruthless man over those he could humiliate. Many individuals of course were principled men of conscience, but the structures through which slave owners governed privileged men with a strong will, which Lieber noted easily degenerates into whim, particularly when divorced from the stabilizing institutions monarchy provided.

Lieber observed that national debate over reprisals and war crimes tribunals extending over a three-year period validated his theory that civil society controlled the ever-destabilizing factor of personal preference by instituting formalized procedures that pushed practical understanding of a national “common good” towards more abstract, depersonalized formulations. The process of transferring warfare from the personal authority of leaders into depersonalized rule of law was bound to be confusing, contradictory, and slow. Disagreements and private interests would remain very alive disturbances within public life. In the end, if civil society insisted, political and military leaders would feel bound to obey formal laws governing warfare.

The U.S. Civil War revealed, Lieber held, the stark political choice modern societies faced was between rule of law or the personal rule of a supreme leader. As he put it: “institutional and firmly-established liberty, whether this be monarchical or republican” or “intermittent revolution and despotism, which, like the surgeon’s tourniquet may stanch the blood for a moment, but has no healing power, nor can it be left permanently on the lacerated artery without causing mortification and death.” Lieber worried that “absolutism in our age is daringly draping itself in the mantle of liberty, both in Europe and here.” The subject of his concern in these statements was the deepening crisis in Mexico.

Conservatives and Liberals had been fighting for control of Mexico since 1808, with civil wars breaking out every few years. The instability invited a failed French effort to seize part of



of the country in 1839 and a more successful U.S. invasion that ended with the loss of the northern half of the Republic of Mexico. The conservatives had been responsible for that disaster, and as a result they lost much of their support in the country. The civil war of the 1850s concluded with decisive Liberal victories and a launching of a grand program of reform and modernization. Conservative leaders in exile in Europe decided that their country needed to restore the monarchy. They approached several princes to see if there might be interest in coming to Mexico as a monarch, among them Archduke Maximilian, younger brother of the Emperor of Austria-Hungary. Maximilian at the time was viceroy of Lombardy-Venetia, where he had gained a reputation as a unifying figure, respectful of tradition but also open to liberal reform. As a Habsburg, he was successor to Spanish kings who had made the Kingdom of New Spain one of the wealthiest nations in the world and whose memory most Mexicans continued to honor. Maximilian found the proposal intriguing. He had spent time in Brazil, where his cousin Pedro II was emperor and much loved by his people. However, Maximilian would accept the charge only if the Mexican people invited him to be their ruler.

The conservatives were out of power, unlikely to return soon, unable to arrange the plebescite Maximilian desired without a revolution. An opportunity arose for them in 1861, when the Mexican Supreme Court ruled that foreign loans a previous government had contracted violated the constitution. The government canceled payments. The United Kingdom, France, and Spain responded by sending warships to occupy Mexico's three most important ports. Mexican conservatives convinced Napoleon III of France that if his armies overthrew the republic of Mexico, a new conservative-led national assembly would invite Maximilian to be the country's emperor. The new Empire of Mexico would enter into a permanent alliance with the

Empire of France, a particularly important step in Napoleon's largely frustrated plan to create a union of Latin peoples. Napoleon III accepted the proposal, but his strategic plans went far beyond Mexico. He sent military forces into Mexico as a first step towards a bigger and more important goal—intervening in the on-going civil war in the United States. Once Mexico was secure, which he assumed would be a matter of weeks, Napoleon intended to send French military forces north to support the Confederates by taking the ports of New Orleans, Mobile, and Pensacola back from the Union, and then providing ground forces to assist Confederate forces in Virginia and Tennessee. French units assisting the Confederates could look to Mexico for reinforcements and supplies. Napoleon's strategic objectives were, first, break the Yankee republic into pieces, which would then make possible his second goal, challenging English commercial domination of the western hemisphere, which, after his plan succeeded, would be reassembled into a customs and cultural union guided by the French Empire.

Lincoln's government naturally intended to frustrate French plans. Given the on-going civil war, no military forces were available to assist the republican government of Mexico led by the Chief Justice of the Supreme Court, Benito Juárez, serving as interim president. Civil society in the United States sprang into action. Committees of support for Mexican independence spread across the Union, raising funds, donating weapons and munitions, arranging for transportation, establishing a pipeline to Mexico that reinvigorated Juárez's armies. Neither Maximilian, who arrived in 1864, nor his French allies were able to pacify the Mexican countryside. After the surrender of the Confederate army in April 1865 and the collapse of the Confederate government, the French position within Mexico was unsustainable and Napoleon's broader strategic goals were unattainable. Diplomatic negotiations were contentious, but short. They

concluded with a plan for orderly withdrawal of French fighting men over the course of a year. Non-military personnel and assistance could remain to support the government of Emperor Maximilian, but he now faced the Mexican people on his own. If he were to survive, he had to win them over and isolate his opponents.

Maximilian came to Mexico with many ideas how to improve the lives of the Mexican people and strengthen its economy. If one reads Mexican histories of the Second War of French Intervention (as it is known there), Maximilian's good intentions are duly noted but dismissed as irrelevant. Maximilian invited demobilized Confederate soldiers to come to Mexico, promising them land grants, noble titles, access to cheap labor, and freedom to practice their Protestant religion. His conservative supporters in Mexico were unhappy. They had not wanted freedom of religion nor could any Mexican statesman hope to succeed by opening the wealth of the country to North Americans. As his support diminished inside Mexico, Maximilian, at the end of 1865, issued his infamous "black decrees," which he viewed as regrettable but necessary to regain control of the situation on the ground. The first decree called for summary executions of all captured insurgent military forces, including officers. The top two republican generals were executed despite protests from the French, who had recently endorsed the first Geneva convention. The second decree alienated everyone who lived in the countryside, regardless of their political sympathies, by making the possession of a gun or other deadly weapons by any person who was not a soldier in Maximilian's army proof of insurgent status. As a result, anyone with a gun on their person or in their homes was to be executed, and many were. The third decree required reprisals for attacks on Maximilian's military forces, including execution of civilians in nearby communities. This provision also was a violation of the Geneva convention.

The black decrees outraged public opinion in the United States and across Europe, especially in France. They also guaranteed that once captured, Maximilian and his top generals had to be executed to placate an enraged Mexican public opinion. Juárez hoped that Maximilian could be persuaded to leave the country and sent a sequence of secret messages to the emperor promising that if Maximilian traveled to a port where he could take a ship back to Europe, Mexican republican forces would not pursue his entourage. Maximilian felt he could not leave with honor, and instead led his armies north deep into republican-held territory hoping that a military engagement and royalist victory might change the situation and induce the republicans into negotiation. Instead, soldiers from his side betrayed him and invited Juárez's forces into the fortress where Maximilian had established his headquarters. Maximilian was captured in the room where he had been sleeping. Juárez determined that the war in Mexico had essentially been about the rule of law. To turn the page on personalism in political life required a trial and the death penalty.

An obvious lesson is that order never emerges out of the personal ambitions of a monarch, even when noble ideals and good intentions motivate a magistrate's decisions. Lasting order comes from unity of monarch and people, which for better or worse requires structures like Francis Lieber's voluntary associations operating through unruly, sometimes interminable community meetings. It requires the people thrashing out what they think and feel so they have confidence that those whose authority is to listen and make a determination about what to do now have paid attention and will continue to do so. Maximilian of course was emperor for three years only. He never had the time to establish a relation with his people. Maximilian came intending to restore order, but his assessment of the situation in Mexico led him to conclude that

force counted more than discussion. Maximilian, like the Confederates before him, failed because he acted as if sovereign will demanded crushing opposition rather than listening to and refining the popular voice.

Though Mexico lacked the kind of robust voluntary associations that were so central to governance in the United States, it had traditions that, when working, assured that popular opinion advised the monarch and his representatives. To take a look at this, let us briefly go back to the Kingdom of New Spain in the mid-seventeenth century, when Mexico City was among the largest and most prosperous of the numerous Habsburg capitals. At this time, ninety percent of the population in the city were Indians, ten percent were sojourners from Europe, Africa, and Asia. For insight into how the indigenous majority viewed their king, I will turn to Chimalpahin, a prominent leader in the community. He was a *tlamatinime*, a Nahuatl term roughly meaning “knowledge keeper,” which is to say, Chimalpahin wrote histories of the Nahua, Otomí, and Mixtec peoples from their arrival in the Valley of Mexico up to his own period. Most of his writings were in Nahuatl, although he did produce several books in Spanish, primarily documenting the histories of prominent Indian families seeking patents of nobility. Chimalpahin was famous in his lifetime for his explanations of the Spanish conception of justice and their relation to Nahua concepts typically translated as “order.” Chimalpahin came from a noble family with well-documented ancient roots predating the arrival of the Spanish by many centuries. He sat on the elected council or *cabildo* that the viceroyalty established for *la República de Indios* to govern itself. His perspective was aristocratic. He held that only a few families in any country had the training, connections, or perspectives required for responsible leadership. Nonetheless, traditional indigenous customs required the *cabildo* to preside over

regularly scheduled community meetings, open to all, men, women, and children, everyone free to voice an opinion or ask a question. No major policy decisions were binding unless the community as a whole concurred with the *cabildo*. The viceroy and his staff understood that this was the way Indian communities had always governed themselves. In their dealings with the Indian *cabildo*, they wanted to know if a consensus had emerged in the community. Consensus did not mean unanimity, but simply a point in the gatherings when discussion and debate came to an end, the *cabildo* announced its decision, and nobody protested.

Community gatherings were rowdy, all-day affairs. Discussion might pause for the group to listen to lengthy readings from narratives of Mexico's history. As a writer of historical annals, Chimalpahin's special talent was to present narratives of his people's past that instructed them about how to act in the present. In the 1650s, the last decade of his life, New Spain went through a period of major political crisis. The most pressing issue was how to pay for the kingdom's government. Europeans were only ten percent of the population, but they paid most of the taxes. Indian nobles, such as Chimalpahin, contributed to the state's finances, but their payments were technically considered voluntary gifts to the king rather than taxes. Indian commoners paid no taxes at all because they provided free labor to the viceroyalty and to the Indian nobility. The amount of labor service demanded had been increasing, causing resentment within the community. Some commoners filed complaints with the viceroy asking him to intervene and reduce the labor service their *cabildo* imposed on them lest they be unable "to provide for their children." This division within the indigenous community led to a proposal from the European *cabildo* that Indian commoners pay modest cash taxes and be released from all obligations to provide free labor to the government and notable families.

The leading Indian families depended on labor service to cultivate the extensive lands they owned. They did hire workers for wages as they needed to, but community service obligations provided most of the work the notables needed. Having to hire all their workers would reduce their income, which, they argued would force them to reduce their spending on a wide range of community needs, leading as they said to needless suffering. Beyond very real economic factors, labor corvées were an important traditional practice originating in times long preceding the Aztecs, a central symbol of the power of leading families continuing without interruption into the Kingdom of New Spain.

Divisions within the community were deep. Chimalpahin's task in the narratives he prepared for community meetings on the tax proposal was to reunite nobility and commoners. His presentation began with a history of labor service in ancient times. It was a sign of an orderly common life. To eliminate it, Chimalpahin argued, would increase the power of demons to spread disorder through the world. Commoners did not like their obligations to provide free labor, but did they understand the dangers for them of paying taxes? When a road or a canal needed repair, the men sent to do the job knew they had the arms and shoulders needed for the work. If they had to give money to the king every year, they might not have cash for buying seed, farm implements, or animals. Children might go hungry because of the taxes. The history of the Valley of Mexico had another, equally serious lesson to teach about taxes. In ancient Mexico, only conquered peoples paid taxes. They had become slaves to the Aztec kings, while the noble families of free communities sent gifts in appreciation for the order kings brought into the world. The Indian community knew well that some Europeans believed the Spanish had conquered the Indians. Their belief was incorrect, Chimalpahin wrote.

The Spanish who had wandered into Mexico conquered a small group of alien rulers, at the time under the leadership of Moctezuma, who had alienated most of the peoples of Mexico through continuous wars and exorbitant demands for labor service, taxes, and sacrificial victims. Chimalpahin's people recognized Hernán Cortés's role as a restorer of order and allied with him. Indian warriors conquered Moctezuma after they swore allegiance to King Carlos of Spain and converted to the new sovereign's religion. Much as their ancestors had done in 1325, when wandering Aztecs arrived in the Valley of Mexico and led a revolution against the Anáhuac alliance centered in Tula, or as even more ancient ancestors had done in the ninth century, when wandering Otomí arrived and led a revolution against the ruling Toltec alliance. For all rulers eventually become corrupted and need to return to the underworld. When Cortés arrived, Chimalpahin's ancestors saw the completion of a pattern. They withdrew their allegiance to Moctezuma and voluntarily gave it to Carlos I, King of Spain.

The singular difference distinguishing New Spain from earlier kingdoms was that the king resided on the other side of the ocean. Would he hear and understand? Would he know and respond? Or would ruffians acting falsely in his name continue to deceive him? For the Indians the king's response was the critical question for the future, for when a high ruler failed to act as a good father, nature rebelled and a new band of wandering warriors appeared out of a chaos that was both social and natural to establish a new "sun." King Philip responded as a good ruler should. He brought an end to the crisis by choosing to restore justice rather than insist on his royal rights. He sent a special representative to New Spain who removed those who abused their authority and punished those who belonged in Hell. The special representative sealed the people's loyalty to the king of Spain by giving native communities that affirmed the bonds of



loyalty their grandfathers had made charters guaranteeing perpetual possession of their lands provided the communities completed their labor service as requested. The words proved to everyone's satisfaction that the king had permanently exempted Indian communities from taxes or any fiscal obligations that might weaken their attachment to their ancestral homes.

Chimalpahin's account concluded with tears flowing freely and in great volume, a sign in Mexican narratives that binding decisions were to be made, binding for the future because a people clung to their rulers as sons to their fathers. The divisions between noble families and commoners dissolved away, lest disunity allow greedy men to steal everything they had.

Chimalpahin took great pains to explain the Spanish concept of justice, which made sense to him only when connected to Nahua worries about the eternal conflict of order and disorder.

The unity of nobility and commoners in the Indian community impressed the viceroy. He killed the proposal for extending taxation to all households and affirmed the king's love for his Indian subjects by issuing more charters protecting their liberties and autonomy. The financial problems remained, so a century later, the Bourbon kings who replaced the Habsburgs imposed taxes on all in New Spain as part of a modernization of government. Within a few decades, the revolution of 1810 swept away the Kingdom of New Spain and from its ruins arose the very unstable Republic of Mexico. The revolution likely would have made sense to Chimalpahin as confirming his belief that rulers who cannot look into their people's hearts become instruments of disorder. As would the revolution of 1910, when indigenous communities in Mexico brought out the yellowing documents that the Habsburg kings had given them guaranteeing rights and privileges taken away by Bourbon kings and republican presidents alike. While no doubt, there were many complexities and contradictions to the Kingdom of New Spain, because, disorder

always shadows order, the indigenous communities of Mexico remembered Habsburg rule as a time of peace and prosperity guaranteed in an exchange of mutual care and loyalty.

But to return to 1865. Francis Lieber and Henri Dunant, having collaborated so successfully on the Geneva Convention, formed a new international committee urging the creation of a permanent international court empowered to arbitrate disputes between nations. The French occupation of Mexico and the difficult war it provoked, which threatened to expand if the United States got directly involved, was the immediate impetus. It was a situation calling for formal adjudication that could permit the belligerents to step back and allow neutral parties to find a just solution. The concept of “universal justice” (defined more narrowly as law valid across national boundaries) that emerged was institutionalist. Promoters of internationalist projects sought to codify what is permitted and what is prohibited, they wanted to create institutions able to contain debate within recognized protocols.

Traditional diplomacy did resolve the issues separating the United States and Europe in the 1860s, including the war in Mexico. The goal of establishing an international court that could issue legal decisions on disputes involving two or more countries proved elusive. It needed more time, much more discussion. Francis Lieber died in 1872, but his perspectives influenced discussions in the Hague that established the Permanent Court of Arbitration, the precursor to the current International Court of Justice. In most ways, the project remains unfinished, but Lieber had argued that successfully increasing international collaboration on *any* topic, however innocuous or uncontroversial, requires many, many generations. Seemingly endless talk is inescapable, indeed essential, for creating new institutions that are stable, work

effectively, and are positioned to grow as enough people recognize a need. This observation of his of course projected his experience of civil society in the United States onto global politics.

The original sin of Lieber's approach is that global governance looks very much like what will later be called "Americanization." The privileged position of the United States was not incidental to his project for he and his followers in the United States, many over the unfolding years holding very high office, firmly believed that exporting U.S. institutions and practices was necessary for humanity's improvement. Herein lies a problem for the contemporary world: the confusion of power and ideals has been a defining feature of the U.S. relationship with other countries. Yet, however much driven by considerations inside the United States of how to expand the nation's international power and influence, policies linking sovereign nations in shared practical projects could not have endured if they had not also expressed idealistic, at times utopian visions of nations, big and small, rich and poor, equally submitting to a formal system of international law that operated through fair and disinterested procedures. The noted Argentinean historian Tulio Halperín Donghi stressed that a distinctive feature of U.S. dominance has been reliance on cultural conversion, with the assumptions of the more powerful partner presumed to reflect a "natural law" that the weaker had to respect, even if they did not particularly like the consequences for their countries. Integration required implementing the logic of the U.S. approach to business, politics, and culture, which forced the elites of allied states increasingly to operate like their U.S. counterparts. Even when disagreements arose, rupture was unthinkable, which tended to make ruptures when they did occur particularly violent. Halperín Donghi's astute analysis of the contradiction underlying the multilateral international organizations that the United States preferred during the twentieth century explains why in fact resistance was very

thinkable and acted on continuously, a major factor in the continuing international instability that has marked the period of U.S. global leadership.

Responsible rule requires voluntary submission to the rule of law and the ritualization of conflict and violence legal procedures ensures. Our contemporary world still struggles with what this requires, which first and foremost is the limiting of the sovereign will to basic principles voluntarily embraced after lengthy public debate. Is it possible for debate to involve citizens of different nations with very different cultural traditions and economic situations?

Perhaps Europe can provide answers, for the history of the civilization that emerged from the synthesis of Rome and Christianity has a long history of struggling to reconcile universal principles with local realities. It has always been a struggle, at times bitter and violent, and, as Brexit demonstrates, it continues to this day, we hope more amenable to peaceful negotiation of differences than in the past. The outcome of the European project like many things remains a mystery to be discovered in the future.

Justice involves a dialectic. On the one hand, there is imagination in its ability to see evidence, principles, and precedents in new lights, as more than obvious facts. In traditionary discourses like law, the imagination transcends itself to become philosophy, a love and a need for truth, for confronting and comprehending the boundaries of reality. If we follow Socrates, philosophy is a method for apprehending that which is not before us (yet) but whose reality we need to reveal. In its foundational sense, philosophy is negativity. It negates what appears to be real within the scope of tradition and/or habit by unmasking alienation in all its forms, practical and theoretical. This is an idealized formulation that assumes philosophy prepares people to confront a confusing lifeworld as free thinkers and doers, submissive only to divine order. The

goal of philosophy is to reveal representations as propositions about reals without falling into the hubris of confusing provisional interpretations with “the real.” Any claim of a real is undercut by its status as a representation of totality through a fragment, i.e., the deduction of what the whole must be by extrapolating from what we know, which is by definition limited even when our knowledge is often practically effective. The quest for justice means bringing the tools of critical thought to the contentious relations of human beings, but with that triumph, the stability of the known world dissolves into a need to learn more in order to make a more just determination.

To learn requires entering a zone of confusion, which is fine for privileged and safe environments like a school, a museum, a book. It will not do for getting through a day’s responsibilities in any domain of life. Confusion will do even less for reconciling conflicting interpretations members of any community bring to almost any problem between them. Besides inner reflection and acceptance, law requires objectivized, institutionally situated procedures that force desiring wills to accept that justice must exist before, above, and after any given ego. To accept that what a person wants is only a starting point for justice. Will and ego ultimately are less important to justice than the practices and procedures that allow decisions to be made. Justice needs charters and general orders. Not to replace private interest, which is impossible, but to submerge interest into predictable procedures and routines. There will be mistakes along the way, at times many mistakes, but communities will find practical justice only in institutions where the means remain more important than the ends.

We might want to remind ourselves how fragile those accomplishments were; how in a world where justice and order must align to achieve any positive change in human life, how easy it is to reverse gains and demolish that which has protected us from catastrophe.

Universal justice must remain an empty category, a container, for much of history consists of debate leading to struggle, often to violence and terrible crimes against humanity, over the nature of the enduring power or powers whose authority binds individuals whether they want it or not. In deference to the ancient Greeks, I might refer to this enduring force as “the Unknown God,” who may be a mystery but is a real nevertheless when we feel the force of its unpredictability like a sudden punch to the stomach. Or in the words of Euripides, “In vain man’s expectation; God brings the unthought to be.” These were the ideas underlying Lincoln’s assessment in his Second Inaugural Address that both the Union and the rebels had to look to themselves to discover the faults that led to the disaster of the war:

Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said ‘the judgments of the Lord are true and righteous altogether.’

In our current situation, the Real has temporarily taken the form of a novel virus spread across every part of the world. To understand the organism we are dealing with, we detail its

operations and its effects, for therein lie the wrongs we suffer, the hurts and damages we hope can be repaired. Of ultimate reality, the moving force, the why now this virus, the most that we, like Moses on Sinai, are ever allowed to see we might call the backside of the divine. Backstory sounds nicer, more respectful. From that backstory our scientists learn to construct workable vaccines.

The interplay between open-ended imagination, stable institutional procedures, and a real only imperfectly glimpsed I transpose into three keywords pertinent to modern societies: *freedom, responsibility, accountability*. These three concepts, which in everyday politics often get reduced to slogans, stake out the borders of the problem facing our world now. The equation of America, modernity, and a future that is an object equally of desire and loathing comes with a price that has been heavy for all. The danger is augmented by the failure to pose credible alternatives. The United States, after a century of global dominance, is showing the strain of the burden, much as England and Spain did when the power they exercised seemed to provoke as much disorder as order. How can “universal justice” have a foundation in this world if the powers responsible for establishing and regulating “orderly and predictable procedures” for international relations crack under the burden? Perhaps another power will replace the United States as the cynosure of the world. The long record of empires succeeding each other suggests that sooner or later, we or our descendents will all go about reorienting our institutions and our practices to conform to the historical preferences of the new hegemon, but we will also preserve as much of our own identity as we can. Given the force now at the disposal of great powers, the transition will likely be more destructive than those that preceded. Why can’t we work towards an international order that has learned how to be truly trans-national and trans-cultural,

congealed in practices and institutions that have grown from whatever consensus global public opinion can form? An attractive proposition, possibly unworkable. At the present moment, an institutionalist can say, the deepest, perhaps only practical model exists in Europe, but the European experiment is still quite young, perhaps even truly untested. It has yet to go through a challenge as exacting as the U.S. civil war.

Wherever the foundation for a new international system emerges, always as change comes there is a question that must be asked even if the answer stops nothing—Is this future that appears so inevitable one that we want? Perhaps another way of saying that *justice, equality, freedom, fraternity, community, understanding, transformative knowledge* must be pursued even though none can say exactly what any of those words mean or will ever be satisfied in anything more than a temporary, disappointing manner. The absence of whatever the real is those words index however is felt as genuine threat, a loss that would diminish our lives in significant ways. The aspirations those words represent ask for a civilization-building project. Even if we might be confused about the foundations of the civilization we imagine imperfectly, the project itself may be enough for the center to hold for a few more generations.