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CHAPTER 2

A LESS ELEVATED COSMOPOLITANISM: VICTOR HUGO, FRANCIS LIEBER, AND THE FRANCO-PRUSSIAN WAR OF 1870

Ville Kari^{1*}

I. INTRODUCTION

International lawyers love old men. The history of the discipline, in all its glory and regalia, is typically portrayed as a succession of great minds, mostly men and mostly white, who each in turn caressed and developed their legal patrimony and then passed it on to their intellectual heirs.² To be sure, such mythology is basically understandable; how else does an intellectual tradition survive and transmit itself than through a chain of influential minds and canonized writings?³ Its Eurocentrism and the maleness are, likewise, recognized as omnipresent shortcomings in the entire discipline that also reflect the broader global and societal constraints prevailing in the period.⁴ Hence any great-man story is evidently only an inherited ideal self-image, or maybe a ritual of self-congratulation between the prospective and anointed members of ‘our’ profession. We stand on the shoulders of giants, we are touched by the aura of angels, we, the heirs of prophets. In reality, we of course know that behind every great man there is a woman rolling her eyes, and we have seen enough

1 “This chapter has been made possible by the Emil Aaltonen foundation, the Ella and Georg Ehrnrooth foundation, the Niilo Helander foundation, and the March the 25th foundation. Parts of it were written during a visiting fellowship at the Laureate Program in International Law at Melbourne Law School. Also thanks to Jarna Petman for inspiring sources and background materials.

2 The definitive statement being the Carnegie Endowment for International Peace series of the Classics of International Law, edited by James Brown Scott. See the series of biographies portrayed in Bardo Fassbender and Anne Peters (eds.) *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012), as well as in the *Max Planck Encyclopedia of Public International Law*. Histories that seek to avoid the great-man emphasis by exploring the teachings of such men in their academic, professional or political contexts, may arguably nonetheless perpetuate the great-man story (or at least some form of ‘man-story’) in the broader sense. The present author, including in the present text, is not above this limitation. See Martti Koskenniemi and Ville Kari, ‘A More Elevated Patriotism: The Emergence of International and Comparative Law (Nineteenth Century)’ in Heikki Pihlajamäki, Markus D. Dubber, and Mark Godfrey (eds.), *The Oxford Handbook of European Legal History* (Oxford University Press, forthcoming).

3 On law as tradition, see H. Patrick Glenn, ‘A Concept of Legal Tradition’ (2008) 34 *Queen’s Law Journal* 427. More generally, Susan Blackmore, *The Meme Machine* (Oxford University Press, 1999).

4 E.g. Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000); Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2005); Anne Orford (ed.), *International Law and its Others* (Cambridge University Press, 2006).

depleted careers to know that a real person's life is a long business, that the ups of life come with plenty of downs in between.

This essay was written to remind the reader (and its author) that the 'great men' were not always great, and that even their greatness came in surprising shapes under various circumstances. This is not a radical statement and certainly not rocket science, but it is a truism which deserves to be spoken out aloud every now and then. The chapter does this by juxtaposing the lives of two world-famous cosmopolites in the mid-to-late nineteenth century, the formative era of the international legal disciplines.⁵ The two individuals in question are Victor Hugo and Francis Lieber, one a father of literary romanticism, a utopian poet and pacifist politician, the other a venerated founding father of humanitarian law who nonetheless had a bluntly matter-of-fact attitude towards war, shaped by personal experience and loss. While neither of the two men was originally educated as a lawyer in the precise sense, and neither was (apart from Lieber's final arbitral years) in any direct office of international power, there should be little doubt about each one's overall influence for the emerging *esprit d'internationalité*.⁶

The lives of Hugo and Lieber paralleled and mirrored each other around certain important formative historical events. The Europe of their childhoods was born from the cannon of Napoleon Bonaparte, whom Hugo's father served as an officer, whose armies marched into Berlin when Lieber was a boy, and whom Lieber then fought back in the ranks at Waterloo. They were a Frenchman and a German living their years of fame abroad, each publishing their definitive works in the early 1860s. And most importantly, their homelands clashed fiercely in 1870–71. This experience, the Franco-Prussian war, is the crux of the story. For while both Hugo and Lieber in broad terms served compatible ideals of international liberalism and the peaceful advancement of civilization, the war between their nations pitted them on the opposing sides of the European rift. Although neither let go of their desire to speak in the name of the broader humanity and justice, their interpretations of that universal justice were strongly based on their sentiments towards Paris and Berlin.

Of these two characters, Victor Hugo shall be explored in somewhat more detail than Francis Lieber, since Lieber is already well established in the canon of international law and needs less introduction. Hugo, on the other hand, is less known in this context. Given the tendency of his talks to be full of hot air and artistic license, this is perhaps justly so. But Hugo the politician was nonetheless a visible and persistent member of the international peace congresses in Europe between 1849 and 1875. His pen and voice offered a significant platform for the ideas of civilization and humanity that were ever so essential also to the rise of international

5 For this context, see Koskeniemi and Kari, 'A More Elevated Patriotism'; Martti Koskeniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press, 2001).

6 On this *esprit*, see Koskeniemi, *Gentle Civilizer*, at 12–19.

law. And surely there is no denying the iconic value of his works to the progressive forces and popular mass movements of the era.

Human lives are contingent and complex affairs, and a lifetime of virtue is a long business. By studying the lives of two famous historical cosmopolitans in a longer-than-usual and sometimes not-so-flattering perspective, we may pay attention to the dynamic nature of their individual characters. The questions that arise are essential. When and what is the individual whose virtue or character we might assess? What is the context, the role, the scope of such individuals in the various points of their lives? How and why are they to be framed, and by whose decision? And by whose standards should we assess them when they turn out to have been slave owners and ageing womanizers? Such questions shall remain open here – hence the term ‘essay’ – but it will be suggested that asking these kinds of questions constitutes precisely the foundation of any effort to meaningfully connect any theoretical views on virtue or virtuousness with the inherently imperfect human condition in the real world. That said, at the end of the day, merely talking about the merits and limits of ‘great men’ by simply re-examining such men cannot really alter the traditional focus. For that to happen, alternative points and persons of interest should be discovered for representation. This chapter, however, remains more modest in its reach.

II. ON VICTOR HUGO⁷

Victor Hugo was a self-declared man of contradictions and critical oppositions.⁸ In his famous romantic manifesto (the preface to his tragedy *Cromwell*) he asserted the need for poetry and literature to explore the grotesque besides the beautiful, the frightening besides the ideal, so as to fully embrace the potency of human experience and to cultivate a both rational and emotional yearning for enlightenment.⁹ To Hugo, any ‘whole thing’ was always made of antithetical positions: “let us observe that this saying, *totus in antithesi*, which pretends to be a criticism, might be simply a statement of fact.”¹⁰ His romanticism signified a revolution in artistic freedom, the breaking of established distinctions and hierarchies – “simply, all things considered,

7 The principal biographic sources used here have been Jean-François Kahn, *Victor Hugo: Un révolutionnaire suivi de L'extraordinaire métamorphose* (Paris: Fayard, 2001); Graham Robb, *Victor Hugo* (London: Picador, 1997); A. F. Davidson, *Victor Hugo: His Life and Work* (London: Eveleigh Nash, 1912); and Alfred Barbou, *Victor Hugo and His Time* (London: Sampson Low, Marston, Searle and Livingston, 1882, Frewer trans). Hugo's own *Actes et Paroles* have also been used. Kahn's work is probably the most detailed, and Robb's the most observant, the two having thus been the most useful.

8 Frederick Brown, ‘Et tu, Hugo’, *The New York Review of Books*, 17 January 1985.

9 Victor Hugo, *Cromwell* (Paris, 1827). See also Albert W. Halsall, *Victor Hugo and the Romantic Drama* (Toronto: University of Toronto Press, 1998), at 52–71; René Coulet du Gard, ‘Victor Hugo's “Cromwell”’, (1976) 3 *Literary Onomastics Studies*, Article 9.

10 Victor Hugo, *William Shakespeare* 8th edn. (Chicago: A. C. McClurg and Co, 1911 [1864], Anderson trans), at 204–205.

and that is its real definition, *Liberalism* in literature”.¹¹ As the poet and the author, Hugo saw himself as a bridge-builder between such disparate perspectives, a teacher of empathy and compassion in the hearts of people. Apart from being a poet, he was also a visible member of the French elites, a member of the *Académie française*, and a representative of the people in various national assemblies. A popular public figure with increasingly leftwing sentimentalities, he was often at odds with his bourgeois allies and colleagues as he defended his radical views on issues such as universal suffrage, criminal justice, and the abolition of the death penalty.¹² His life was fundamentally marked by his protest and exile in 1851 after Louis Napoleon seized supreme control in France. For two decades, Hugo would reside on the Channel Islands and produce some of his most influential works as well as a stream of anti-monarchical opinions, beginning with *Napoléon le Petit* in 1852.

For Victor Hugo there was no distinction between the roles of the author and the social reformer. The arts of the *belles lettres* were as essential a tool in the improvement of the world as any legal treaties, ballots or bills. He saw literacy and education inextricably linked with the advancement of civilization. This meant in the domestic sphere above all the reduction in the brutality and extensiveness of the criminal justice system, and in the international sphere the abolition of standing armies and borders as well as the advancement of free liberal intercourse between private citizens. “Literature secretes civilization, poetry secretes the ideal,” he wrote in exile, “That is why poets are the first instructors of the people. ... That is why there must be a vast public literary domain.”¹³ Poverty, crime, and wretchedness were thus questions of lack of education and lack of equal opportunity, while the weapon with which to combat these was liberal enlightenment. The disaster of 1848 was brought about by the failure of the Republic to set aside ‘politics’ and focus on ‘social questions’. Once the *ancien régime* had been cleared away, it was the task of the thinking and progressive men to construct a new, better world. “Up, now, O intelligences!” urged Hugo, “to construct the people” in the spirit of “progress”, and progress through enlightenment.¹⁴ Their century was a century born of the French revolution: “The triple movement – literary, philosophical, and social – of the nineteenth century, which is one single movement, is nothing but the current of the revolution in ideas.”¹⁵ At the heart of this progressive revolution was no other character than the poet, the enlightener of the enlighteners, the one ultimately responsible for people’s souls; as his own rule of life put it, *le poète a charge d’âmes*.¹⁶

11 Cited in Halsall, Hugo and Romantic Drama, at 68.

12 An early key work of course being *Le Dernier Jour d’un condamné* (Paris: Ch. Gosselin, 1829).

13 Hugo, William Shakespeare, at 295–296.

14 Hugo, William Shakespeare, at 294–295. I have adjusted the translation.

15 Hugo, William Shakespeare, at 373.

16 Victor Hugo, William Shakespeare (Paris: Librairie Internationale, 1864), 410. The original is in Victor Hugo, *Lucrece Borgia* (Paris: Michel Lévy, 1881 [1833]), at X–XI.

Victor Hugo's political tendencies had grown gradually ever since 1832 when he was allegedly caught in the crossfire as a passer-by at Les Halles during the June revolt.¹⁷ But his actual emergence as a French politician coincided with the revolution of 1848, 'the central event' in his life.¹⁸ When Louis-Philippe was overthrown in February, Hugo found himself in the circles of Lamartine's new republicans and was then elected into the National Assembly. However, the political turmoil in Paris left him confused between the pressures of the popular revolution and the moderate bourgeois ideals of republicanism. When the workers and the guards of the republic confronted one another on the barricades that summer, Hugo found himself at the Assembly, cut off from his home and family who were enclosed behind the barricades.

What happened next depends on the perspective chosen. In Kahn's telling, the story unfolds as a situation where the republican Assembly, which stood for democracy and universal suffrage, was forced to defend itself against overwhelming mobs of anarchy. In this grim and desperate defense, Victor Hugo showed 'admittedly' a great deal of courage by leading a charge on the barricades at Saint-Denis and elsewhere.¹⁹ In Robb's telling, Hugo submitted to a traumatic phase of desperate dedication for a cause which he knew was not the 'good'. He took part in the ad hoc conferral of emergency powers to General Cavaignac – "Victor Hugo, the people's friend, had voted for a temporary dictatorship"²⁰ – and then actively led a troop of guardsmen with cannon for three days from barricade to barricade, decimating the resistance in blood.²¹ The evidence seems to support both interpretations, and one thing known for sure is that these days were the origin of the intimate knowledge of the life on the barricades which we may read in *Les Misérables*. In this context, one cannot miss the fact that in Hugo's novel the sympathies of the narrative are on the side of the revolutionaries; the manic dedication and cold sense of duty belong to the people's adversary Javert. The June massacre was a pivotal moment in Victor Hugo's metamorphosis from a modest *pair de France* to an increasingly public dissident.²² Later, when a new centralized constitution had been passed and Louis Napoléon began to represent a disappointment and disaster for the new Republic, Hugo regained his bearings. He once again began to speak out against the powers that be and finally sided with the currents of social reform. Whatever had happened to him and his worldview in the June massacre, it may have been this experience that caused him to emphasize the themes of penitence and redemption

17 Robb, Victor Hugo, at 173.

18 Robb, Victor Hugo, at 269.

19 Kahn, *Métamorphose*, at 736–756.

20 Robb, Victor Hugo, at 269.

21 Robb, Victor Hugo, at 275–276.

22 This is the theme of Kahn's *L'extraordinaire Métamorphose*. See also Robb, Victor Hugo, at 280–289.

in his coming masterpieces. It would have been his political original sin. Be as it may, this newfound alliance with the Left also led Hugo to contacts with the socialist cause as well as the emerging liberal internationalism.

In 1849, Victor Hugo presided over the third International Peace Congress of the Friends of Peace.²³ His speech, certainly crafted to please the audience, recounted a vision of international progress through technology, trade, and civilization. On the podium, Hugo welcomed the hundreds of foreign visitors to Paris “to proclaim the brotherhood of mankind.”²⁴ He had in his mind nothing less than his project for a United States of Europe. Although it was “quite clear that all will call it utopian”, he assured that the route to universal peace was predetermined in the inevitable enlightened progress of mankind: “A day will come when you nations of the Continent will, without losing your distinctive qualities and your glorious individuality, be blended into a superior unity, and constitute a European fraternity. A day will come when the only battle-field will be the market open to commerce and the mind opening to new ideas.” The ultimate product of this European unity and free market would be the end of war and prosperity throughout the Western world, when “the United States of America and the United States of Europe, shall be seen uniting, for the good of all”. And then “a cannon will be exhibited in public museums, just as an instrument of torture is now, and people will be astonished how such a thing could have been.”

This Western civilization would then become universal. Hugo described a world shrinking faster and faster with technological progress, and called for an immediate

23 The International Peace Congresses of the Friends of Peace were a series of public unofficial congresses of liberal pacifist thinkers which began in London in 1843. Their origins were partly in the Anglophone peace societies that had been instituted since the fall of Napoleon, and partly in French Saint-Simonianism and moral societies such as the Société de la Morale Chrétienne. The international congresses were meetings with broad attendance of people of various walks of life, academics, politicians, clergymen, publicists and businessmen, among them men such as the British free trade magnate Richard Cobden, the Belgian lawyer and philanthropist Auguste Vissschiers, the American ‘learned blacksmith’ Elihu Burritt, and many of the founding fathers of the ICRC. In the 1860s a succession of similar events was organized as an international Ligue internationale et permanente de la Paix at the initiative of the economist Frédéric Passy. These were rivalled by French pacifists such as Charles Lemonnier who sought to institute more profound changes and push for the United States of Europe. After another rift with the establishment of the workers’ International, members of the International were admitted in the bourgeois peace conferences in private capacity. On the conferences generally, see André Durand, ‘Gustave Moynier et les sociétés de la Paix’, (1996) 78 *International Review of the Red Cross* 575; ‘Note sur le mouvement en faveur de la paix’ in *Compte-rendu de Congrès des Amis de la Paix Universelle Réuni à Paris en 1849* (Paris : Guillaumin et Co, 1850), at iii–viii ; Vanessa Fabius Lincoln, *Organizing International Society: The French Peace Movement and the Origins of Reformist Internationalism, 1821-1853* (PhD thesis, University of California, Berkeley, 2013), at 90–109. The Congress of 1849 was to be the first of many in which Victor Hugo presided, participated, or sent written greetings. Hugo’s membership of the various peace congresses has not been a point of much attention; some biographies omit these connections altogether, while others see them as part of a more mundane rhetorical correspondence. He himself included some of these speeches in his *Actes et Paroles*. Hugo also wholeheartedly supported the project for a United States of Europe, and there allegedly still remains an oak planted by Hugo in the name of the cause at the Hauteville House.

24 Victor Hugo, ‘The United States of Europe. Presidential Address at the International Peace Congress, Paris, August 22, 1849’, (1913-1914) 3 *World Peace Foundation Pamphlet Series* 3, at 3; original in *Compte-rendu de Congrès des Amis de la Paix Universelle Réuni à Paris en 1849*, at 3–5.

project of mutual disarmament. Calculating the funds spent on militaries in Europe over the last decades, he asked what could be achieved had it all been spent on development. “The face of the world would have been changed”, he answered. Isthmuses would be cut through. Railroads would cover the two continents. “Asia would be rescued to civilization; Africa would be rescued to man; abundance would gush forth on every side, from every vein of the earth, at the touch of man, like the living stream from the rock beneath the rod of Moses.” And ultimately, with misery banished, the final reward would be the disappearance of revolutions themselves. “In place of conspiring for revolution, men would combine to establish colonies! In place of introducing barbarism into civilization, civilization would replace barbarism.” Thirty-five years before the Berlin Conference, the way to come was already known among the pacifists.

When Hugo concluded, a jubilant mood erupted, and upon Richard Cobden’s signal the American and English members of the Congress stood up and erupted in cheers. The final resolution of the Congress bore a resemblance to the agenda that would emerge among international legal scholars twenty years later. It called for an obligation on all governments to submit to arbitration in the face of disagreements; a system of disarmament; the perfection of the international means of communication; postal reform; the generalization of weights and measures; and the multiplication of likeminded societies – “the formation of a Congress of nations whose sole objectives shall be the drafting of international laws and the constitution of a supreme Court to which questions touching the rights and obligations of nations shall be submitted”.²⁵

III. ON FRANCIS LIEBER²⁶

Francis Lieber was not a poet. He was an academic German American émigré with a tumultuous past in Europe, a man with a temper and no inherited privilege. He had seen war and suffered in it himself, and his experience of it was grim, practical, and sometimes anecdotal. He had shot a man in the face in battle. He had robbed a Belgian peasant at gunpoint for a piece of bread. He noted once how it was “one of the most peculiar situations a man of reflecting mind can be in, when he casts his balls for battles near at hand”, and he could remember being “called upon to assist in getting a cannon over the mangled bodies of comrades or enemies, leaping in agony when the heavy wheel crossed over them”.²⁷ When, much later in his days,

25 *Compte-rendu de Congrès en 1849*, at 62–63.

26 See generally Elihu Root, ‘Francis Lieber’, (1913) 7 *American Journal of International Law* 453, at 459–461; Silja Vöneky, ‘Francis Lieber (1798–1872)’, in Fassbender and Peters (eds.), *History of International Law*.

27 Lieber’s memories of Waterloo in Daniel C. Gilman (ed.), *The Miscellaneous Writings of Francis Lieber*, Volume I (Philadelphia PA: J.B. Lippincott and Co, 1881), at 153, 156, 157, 160.

he promoted the idea for the codification and amelioration of the laws of war, he did it not so much out of sentiment as out of practical opinion: “There is no sickly philanthropy in this; you know that I have no morbid feeling about war; what I wish, I wish as an earnest publicist, and in the name of international statesmanship.”²⁸

Lieber was born in 1798 in Berlin and grew up in an age when the liberal flames kindled by the French Revolution were also felt in strictly traditional Prussia. But at the same time, the fruit of that Revolution – Bonaparte himself – was sweeping lands near and afar, instilling fears of conquest, and entrenching the conservative order. Francis Lieber was but a boy when Napoleon marched into Berlin, and the memory affected his entire life. In 1815, after Bonaparte broke his exile on Elba, Lieber signed up, as a young teenager, to fight him as a rifleman at Waterloo. He fought at Ligny and was then wounded in the neck in a battle near Namur, which brought him the experience of laying on the battlefield in a long expectation of death, praying and begging for the end or for help, even getting robbed by corpse looters – very much as described in Hugo’s *Les Misérables* or Dunant’s *Memory from Solferino*.²⁹ After Waterloo, Lieber returned home and joined the revolutionary causes opposing the monarchy at home, for which he was arrested and banned from imperial universities. He eventually managed to study briefly at Jena and to complete a degree in mathematics.

After volunteering briefly once more for the cause of revolution in Greece, he finally found himself in Rome as a family tutor of the Prussian Ambassador, Barthold Georg Niebuhr, a world-famous scholar of classical history and historiography. It was with Niebuhr’s benevolence, mentorship and contacts that Lieber was gradually able to establish himself in the life of a man of letters abroad.³⁰ Finding no peaceful return to Germany, Lieber emigrated in 1827 to Boston, where with the help of Niebuhr’s contacts he gradually became a translator and correspondent between American, French and German learned circles (including Alexis de Tocqueville’s network). He became a professor of history in the University of South Carolina in 1835 and a professor of political science at Columbia University in 1857. In that capacity he would become one of the most renowned scholars of international law in his day, revered by the men who set up the *Institut de Droit International* in 1873, and one of the intellectual originators of the discipline of international law.

While Victor Hugo was living his public progressive life in Europe, Francis Lieber was still in the long formative phase of his academic career. He was sometimes struggling for acceptance in the American establishment, publishing writings on the American politics and constitutional questions. In private, he was enduring a less

28 Lieber to Sumner, 27 December 1861, in Thomas Perry (ed.), *The Life and Letters of Francis Lieber* (Boston: James R. Osgood and Co., 1882), 323–325, 325.

29 Gilman (ed.), *Miscellaneous Writings*, Vol I, at 162–167; Perry (ed.), *Life and Letters*, at 16–22.

30 Lieber’s reminiscences of Niebuhr are in Gilman (ed.), *Miscellaneous Writings*, at 82–148.

satisfactory period in South Carolina, where he had to seriously grapple with one of his most important private sensibilities: the question of slavery. Lieber became himself a slave owner who for two decades in South Carolina held domestic slaves for allegedly mundane reasons or even because of the local expectations that excluded the use of free servants.³¹ Studies into his writings, letters, and journals suggest that a certain public acquiescence into the legality of slavery was a condition for his ability to hold his chair; he had to repeatedly disown abolitionism in public, but was known in private to disprove and to loathe the "nasty, dirty, selfish institution" of slavery.³² His pursuit of a pragmatic lawyer's middle ground, and maybe partly also his foreignness, led him to lean on the formal validity of the slavery laws and instead to seek to argue against them on economic grounds; he tried to portray slavery as counterproductive to the economy when compared to the benefits of liberalism, civil rights, and free trade.

Explanations aside, for the most part Lieber's instinct for professional self-preservation tended to surpass his conscience. For example, he momentarily broke his ties with his favorite pupil Charles Sumner when the latter had become a firebrand abolitionist in the Senate and had sent Lieber his materials in anticipation of public support.³³ But when the faculty in South Carolina finally made Lieber's life unbearable and pressured him to resign, it lost its leverage over his public opinion. After that, Lieber's voice changed. At Columbia University, he opposed the practice of slavery on the very grounds of it being a violation against the law of nations. He claimed that "the Law of Nations knows no distinction of color", he paid tribute to John Brown when it was the time, and when war later had broken out, he argued on jurisprudential grounds that all slaves coming into Union territory must *ipso facto* be free: "That mixture of the two ideas, *man* and *thing*, ... is a forced one, – forced by municipal law or violence, – and ceases, I take it, by the inherent character of war, which, by its physical contest of men with men, reduces men again to their simple status of men. ... The law of nature does not acknowledge the difference of skin, and war is carried on by the law of nature."³⁴

When the American civil war broke out in 1861, Lieber was among the participants in the public debate concerning the legal status of the seceded states. His views favoured humanitarian perspectives. He had good reason: he had sons fighting on both sides, and one of them even fell while another got maimed. When in the beginning of the war the crew of the Confederate privateer *Jefferson Davis* were brought to trial in New York, *The New York Times* published below its account of

31 See Lieber's guilty list of motivations explaining the first purchase in Hartmut Keil, 'Francis Lieber's Attitudes on Race, Slavery, and Abolition', (2008) 28 *Journal of American Ethnic History* 13, at 13–14.

32 Perry (ed.), *Life and Letters*, at 108.

33 Frank Freidel, 'Francis Lieber, Charles Sumner, and Slavery', (1943) 9 *Journal of Southern History* 75.

34 Lieber to Sumner, 19 December 1861, in Perry (ed.), *Life and Letters*, at 322; Keil, 'Francis Lieber's Attitudes'.

the trial a report of a lecture given by Lieber on the Laws and Usages of War.³⁵ In his lecture, Lieber did not teach pacifism but a civilization of warfare. The world had just entered a new period in the history of ideas regarding wars, he claimed. The “anti-war period”, which had begun at the battle of Waterloo and ended with the Crimean war, was now ending. The anti-war period had been “distinguished by the almost universal opinion that war was inadmissible under any circumstances, that it brought nothing but misery to man”. But now, concluded Lieber, the time had come to recommence the study and development of the laws of war: “The history of this law is really one of the histories of human progress, and it is a blessed thing that even in a time when men are arrayed against one another to kill and destroy, that humanity cannot be perfectly rejected.” For Lieber, the days of peace were over but a civilization of war might still be possible.

In 1862, Lieber received general Halleck’s approval to prepare a concise compilation of the laws of war for the use of the Union armed forces. The result was in 1863 the *General Orders No 100: Instructions for the Government of Armies of the United States in the Field*, which would go on to have a life of its own in the history of international law as the Lieber Code. It remains often remembered as the first modern codification of international humanitarian law, although of course in a more precise sense it only represented the American *opinio juris* on the laws of war in its time.³⁶ Lieber himself was specifically careful not to overstate his achievement, but together with Henri Dunant’s work and the Geneva and Hague Conventions, it became a canonical origin story of humanitarian law.³⁷

IV. THE FRANCO-PRUSSIAN WAR OF 1870

The Gathering of the Clouds

In 1869, Europe was at the brink of war. Bismarck’s Prussia was sealing its influence over the rest of Germany, and its brief conflict in 1866 with Austria and Italy had, especially by French accounts, shifted the European balance of power off its rails. When the relatives of the German Hohenzollerns had briefly been offered the crown of Spain, Napoleon III had protested gravely, and was now seeking guarantees and commitments from Prussia to stand down. But Wilhelm had little incentive to comply, and his armies had been modernized, trained and furnished to enable Bismarck and Moltke to operate with considerable ambition. (For this army, Johann

35 ‘Lecture by Dr. Francis Lieber on the Laws and Usages of War’, *The New York Times*, 27 October 1861.

36 See, e.g., Patryk I. Labuda, ‘Lieber Code’ in *Max Planck Encyclopedia of Public International Law* (online edition, September 2014), paras 1, 7, 23-25.

37 Elihu Root, Francis Lieber; Emily Crawford and Alison Pert, *International Humanitarian Law* (Cambridge University Press, 2015), at 5–8.

Caspar Bluntschli had produced *Das Moderne Kriegsrecht der Civilisirten Staaten*, which was openly an adaptation of Francis Lieber's code and which would in the future be furnished with the original Lieber Code as an appendix.) At the same time, Napoleon III's own autocratic seat was shaking, and under the lid, Paris was once again boiling the fumes of revolution.

Under the gathering stormclouds, European intellectuals and pacifists sought to continue their meetings and exchanges. In 1869, the League for Peace (as these groups were then known) arranged another peace congress in the Swiss city of Lausanne. Victor Hugo was again invited and was offered an honorary presidency, which he gladly accepted. By now, Hugo's commitment to the idea of a European union had become firm and overt. In Lausanne, the year before the invasion of Germany by France, his dream stood as firm as ever. "Citizens of the United States of Europe", began his address, "please permit me to give you this name, for the federal European republic is founded in law in anticipation of its foundation in fact. You exist, and therefore it exists." This Congress of peace was to be more than a meeting of intellectuals, it was "a kind of preparatory committee for the future tables of law."³⁸ It was the duty of this elite in session to represent the masses. The immediate tasks to be taken care of included the abolition of borders between the European nations and the allowing of free circulation and commerce between all civilized peoples. For achieving perpetual peace, Hugo again called for immediate disarmament.

But there was now a darker lining to his message. The rulers were not likely to abandon their armies and their borders, Hugo warned. "That one last war were necessary, alas!, I sure am not one to deny it. ... This deliverance calls for an ultimate strike of revolution, and perhaps, alas! a war that shall be the last. Then all will be achieved." It was a desperate tone for a pacifist, but the price seemed worth paying: "We want a great continental republic: we want the United States of Europe; and I shall end with this word: liberty is our goal, and peace is the result."

Across the Atlantic, these developments were followed by intellectuals just as in Europe. By 1866, Francis Lieber was in close correspondence with Johann Caspar Bluntschli, who was to Lieber more than a professional correspondent. Their discussions often touched on the goings-on in Germany, and the prospects of a German unification under Prussia seem to have kindled some fond feelings in the elder man regarding the fatherland. However much Lieber admired the American democratic institutions and had published influential works of the principles of

38 'Adresse de Victor Hugo au Congrès de la Paix', Bruxelles, in Bulletin Officiel du Congrès de la Paix et de la Liberté (Lausanne, 1869).

progressive liberalism, in his elder days he remained open to the possibility of Germany choosing a different path. In 1866 he confided:

*With regard to Germany, I hold to my opinion that the beginning of all good for the nation must come from its union under one head, and the demolition of the many principalities. Perhaps this can only be effected by a revolutionary king. One thing is essentially true and of the greatest importance. The national polity is the normal type of modern government. And one of the greatest processes in all history is the process of nationalization...*³⁹

As the relations between France and Prussia deteriorated in Europe, Lieber unflinchingly saw both history and justice on Germany's side. "Never, never was a great nation so cheated of her historical inheritance as the German", he complained: "France now demands that the constitution of the German Confederation shall not be changed without the consent of the other great Powers." Ominously, he added: "Prussia has never understood her great destiny since 1815."⁴⁰ The closer the war drifted, the more irritated Lieber became with the French demands. Ideals of universal progress became in his view linked to the necessary rejection of French ideological supremacy. Peace in Europe would follow from true sovereign equality and not from Latin leadership:

*I do not see how war is to be avoided ... simply for the reason that France will not give up her absurd and pretended leadership of civilization, and because the great question of this era is the coexistence of many of the leading races or nations, united by the same international laws, religion, and civilization, and yet divided as nations. Among the ancients one state always ruled; but we, the Cis-Caucasian race, are becoming more and more united in one great confederation, binding together all nations...*⁴¹

In 1870, Europe got its war. After Bismarck's debacle with the Ems telegram, the French senate and *corps législatif* voted in July 1870 for a declaration of war, "prepared to maintain the war which is offered to us, leaving to each that portion of the responsibility which devolves upon him".⁴²

39 Lieber to Bluntschli, 16 April 1866, in Perry (ed.), *Life and Letters*, at 362 (emphasis in original – VK). Compare also Friedrich von Savigny, 'Of the Vocation of our Age for Legislation and Jurisprudence', in John B. Halsted (ed.), *Romanticism* (New York: Palgrave Macmillan, 1969) 200.

40 Lieber to Bluntschli, 2 June 1866, in Perry (ed.), *Life and Letters*, at 364–365.

41 Lieber to Mittermaier, 26 August 1867, in Perry (ed.), *Life and Letters*, at 373.

42 Declaration of War by France against Prussia (Paris, July 15), *The Times*, 16 July 1870, p. 5.

The War of 1870

The war turned into a disaster for the French as soon as Wilhelm unleashed the relentless von Moltke upon them. In the first days of September, Napoleon III's army was decimated in the battle of Sedan, which cleared the way for a Prussian advance to Paris. As soon as the news reached the capital, a popular uprising overthrew the Second Empire and declared the Third Republic. This was the call for Victor Hugo to return to France. He arrived at the Gare du Nord on the evening of the day following the declaration of the Third Republic, and was received by a cheering crowd. Speaking from the balcony of a café right after his return, in a fashion which Lenin would imitate in 1917, he now explained his return as his duty, the duty to defend Paris:

To save Paris is more than to save France. It is to save the world. Paris is the heart of humanity itself. Paris is the sacred city. Who attacks Paris attacks all mankind. Paris is the capital of civilization, which is neither a kingdom nor an empire, but the entire mankind in its past and in its future. And do you know why Paris is the city of civilization? It is because Paris is the city of the Revolution.⁴³

Victor Hugo had returned to Paris to help save Europe from a war which Napoleon III had begun and which the Prussians had already decisively won. In his mind, France and the French *peuple* were innocent. But France was in chaos, with no lawful government at hand and an armed force still formally loyal to a captured emperor. The interim government called on the people of Paris to prepare for defending the city in the traditional Parisian fashion: arms were distributed to the public and men were recruited into ad hoc national guards and groups of guerrilla *francs-tireurs*.⁴⁴ This suited Moltke, who moved on to put Paris under siege. Seeing the enemy gathering around the capital – towards Villeneuve, towards Versailles – Hugo joined the struggle with his pen and published three open letters: one for the Germans, another for the French, and the third for the Parisians.

In the first letter, Hugo wrote almost as if there were not war at all. “Germans”, called he, “this is a friend speaking”. He welcomed the Germans to Paris, the “city of cities”, which belonged to all mankind as much as it did to the French. But he asked them to arrive as friends between the two nations that had always made Europe. “What is it that we have done to you” asked Hugo, innocently. “It was the empire that wanted this war, the empire that made it. The empire is dead, and well

43 ‘Rentrée a Paris’ in Victor Hugo, Actes et Paroles Tome V – Depuis l’Exil 1870–1876 (Paris: C. Lévy, 1876), 5-7.

44 ‘The Revolution in France’, The Times, 8 September 1870, p. 9.

so. We have nothing in common with that cadaver.” A moral undertone rang in the message: “You come to take Paris by force! But we have always offered it with love. ... We are the French Republic; our motto is ‘*Liberté, Égalité, Fraternité*’; we write on our flag: ‘The United States of Europe’.”⁴⁵

The words were as utopian as they tried to be magnanimous, and their reception varied from the insulted disbelief and anger of many of the Germans to the amused reports of foreign journalists and ambassadors, who saw in them the childish excitement of a celebrity author absent for nineteen years.⁴⁶ In hindsight, the words strike an oddly familiar tone: it appears as though Victor Hugo imagined himself as a sort of real life incarnation of his most beloved character, Bishop Charles-François-Bienvenu Myriel. In the critical juncture of *Les Misérables*, bishop Myriel wins the reader’s heart by his magnanimity as he donates his silvers to Jean Valjean, who has just been caught by the gendarmes for stealing them.⁴⁷ Myriel’s act of clemency is the most famous example of a very essential moral element in Hugo’s writings which followed his works since at least his *Notre-Dame de Paris*: a notion of emancipation through the abrupt fusion between antithetical oppositions caused by acts of individual magnanimity and voluntary surrender: “The rebel magnanimously surrendering his inner self thereby dissolves the power of authority (tradition, law, religion) in a mystical union that suggests a vision of utopia.”⁴⁸ But while Hugo’s characters were creations of fiction, the man seemed now insistent on applying the same emotional device of surprising altruism to put an end to a war over Europe: as will be seen, this was not to be his only attempt.

To his fellow countrymen, Victor Hugo had little to offer but blood, toil, tears, and sweat. In a letter published the day Von Moltke marched into Versailles, he urged all of France to save Paris, “not for Paris, but for the world”.⁴⁹ Like Winston Churchill one lifetime after him, Hugo demanded: “Let us make war day and night, a war on the mountains, a war on the plains, a war in the woods.” Simple now was the advice of the poet of peace, calling his people to dedicate themselves to a “universal” cause: “Defend France heroically, desperately, tenderly. Be terrifying, O patriots!” In his third letter to the people of Paris, Hugo could only call his people to the barricades: “What is the task for today? To fight. What is the task for tomorrow? To win. What is the task for all days? To die. ... There are no more personalities, there are no more ambitions, there is nothing left to remember except the word,

45 Victor Hugo, ‘Aux Allemands’, (Le Rappel, 7 Septembre 1870), in Hugo, Actes et Paroles – Depuis l’Exil, 8-14.

46 Barbou, Hugo and his Time, at 332–333; Robb, Victor Hugo, 449–450.

47 Victor Hugo, *Les Misérables* (1862) Book II, Ch. XII.

48 Brown, ‘Et tu, Hugo’, paraphrasing Victor Brombert, *Victor Hugo and the Visionary Novel* (Cambridge MA: Harvard University Press 1984).

49 Victor Hugo, ‘Aux Français’, (Le Rappel, 18 Septembre 1870), in Hugo, Actes et Paroles – Depuis l’Exil, 15-20.

salut public ... There is only one citizen which is you, I, all of us. I no longer know my name – je m'appelle Patrie."⁵⁰

Victor Hugo was not the only one to have found his patriotic spirit because of the Franco-Prussian war. News of the war travelled across the planet in a matter of days. Lieber wrote to Bluntschli: "The telegraph makes one nervous. It is exciting to read on the blackboard of the newspaper publishers: 'This morning a battle began near Metz which will probably be serious and important.' I should not wonder if we get the news from the battle-field quite as soon as you do."⁵¹

Having become an American citizen and intellectual, Lieber enjoyed in New York a reputation of rationality and impartiality, a certain professional coolness in the face of institutional biases. That very year 1870, Secretary of State Hamilton Fish appointed him as the umpire in the US-Mexican arbitral proceedings on the ground of his expertise at law and his professionalism, thus granting him an honour which would usually belong to foreign dignitaries or heads of state.⁵² But when the news of victory arrived, the old man was quite jubilant, as if here he was experiencing one last rise of the silent ambitions of his youth, concerning his land of birth instead of that of his domestication. "When you thank God that you have lived to see this rising or resuscitation of Germany, you can imagine what must be my feelings," he wrote to Bluntschli, "We will sing a still louder *Te Deum* when the German nation places the imperial crown on William's head. It is the first step which should be taken after all the bloodshed is at an end. William I., Emperor of the Germans!"⁵³

The Prussian cause also crept into Lieber's close affairs with Fish and the important arbitrations that the US was participating in. When he learned that a shipment of arms had been collected by the Americans to be sent to France onboard *La Ville de Paris*, he wrote to the Secretary of State a letter of warning in which he pointed out the high stakes in the ongoing Geneva arbitrations and the *Alabama* affair: "If it be true that the government of the United States, directly or indirectly, sold or handed over arms to the French, it will be a very serious impediment in all our 'Alabama' transactions, not to speak of the fact that it will be deplored by all who love a lofty, and, for this very reason, a truly practical law of nations."⁵⁴ On the surface it was an appeal to the American principle of neutrality, but a Frenchman

50 Victor Hugo, 'Aux Parisiens' (Le Rappel, 3 Octobre 1870), in Hugo, *Actes et Paroles – Depuis l'Exil*, 21-26.

51 Lieber to Bluntschli, 21 August 1870, in Perry (ed.), *Life and Letters*, at 398.

52 Tzvika Alan Nissel, *A History of State Responsibility: The Struggle for International Standards (1870-1960)* (Doctoral thesis, University of Helsinki, 2016), at 85-87.

53 Lieber to Bluntschli, 21 August 1870, in Perry (ed.), *Life and Letters*, at 398.

54 Lieber to Fish, 8 October 1870, in Perry (ed.), *Life and Letters*, at 399.

reading the letter might have seen in it an attempt to obstruct a voluntary shipment of arms to the enemy of Prussia. Meanwhile, in the US-Mexico claims tribunal, where Lieber acted (not always consistently⁵⁵) as umpire, he opined among other things that the Mexicans were waging a “just war against France” or battling “an atrocious invader”,⁵⁶ and that “In all equity Mexico must be supposed cheerfully to avail herself of an opportunity to pay off debts incurred for the purpose of repelling the odious and arrant invasion whose object it was to subvert its entire government.”⁵⁷

Lieber’s exalted memory also harkened back to his childhood and his own “patriotic consecration”, when “sixty four years ago, I was lying in the window looking at the French marching into Berlin, – so attracted by the sight that I could not move, and so grieved at the disgrace that I sobbed aloud.”⁵⁸ As the siege of Paris drew on and the American public was grieving over the loss of French pride, Lieber defended Prussia as the fair and lawful victor and conqueror under the law of nations: “The simple question is, do the Germans want Alsace and Lorraine? If they do, they have the right to keep them. I do not see why not.”⁵⁹ When half a year later the French provisional government had lost control of Paris to the Communards, Lieber viewed the events through a lens of justice being done. Only when the Commune razed the statue of Napoleon, he paused with surprise: “I do not believe in a ‘spirit of the people,’ per se, existing as a thing in itself, apart from the people, and I consider Hegel’s ‘spirit of history,’ as an independent, separate entity, to be nonsense; yet, the manner in which the tables have been turned is not without significance.”⁶⁰ But when peace was finally made, the Frenchmen had earned little respect or forgiveness from Lieber. He wrote to Bluntschli:

Jacquemyns has written another letter to the “Evening Post,” in which he describes the French as he found them in Paris. They would not acknowledge their defeat. So, when I went to Greece by way of France, a few years after Waterloo, the French always insisted that Napoleon was not beaten by the enemy at Waterloo, but that treason caused the defeat. This they maintained especially when they heard

55 Edwin M. Borchard, *The Diplomatic Protection of Citizens Abroad or the Law of International Claims* (New York: Banks Law Publishing Co, 1919), at 297–298.

56 Case of Manasse & Co., Opinion of Dr. Lieber (19 July 1871) in John Bassett Moore (ed.), *History and Digest of the International Arbitrations to which the United States Has Been a Party* (Washington: Government Printing Office 1898), Vol IV, 3462 at 3463-4.

57 Case of Iturria, Award of Dr. Lieber (19 July 1871) in John Bassett Moore, *History and Digest of the International Arbitrations to which the United States Has Been a Party* (Washington: Government Printing Office 1898), Vol IV, 3464 at 3464–5. For more on Lieber’s positions, see Kathryn Greenman, *Intervention, Arbitration and State Responsibility for Rebels* (Doctoral thesis, University of Amsterdam, forthcoming).

58 Lieber to Thayer, 28 October 1870, in Perry (ed.), *Life and Letters*, at 401.

59 Lieber to Bluntschli, 5 November 1866, in Perry (ed.), *Life and Letters*, at 401.

60 Lieber to Bluntschli 23 May 1871, in Perry (ed.), *Life and Letters*, at 411–412.

that I was a Prussian, and had taken part in the battle. A Frenchman, though agreeable and polite in ordinary life, is nevertheless eminently ungentlemanly and cruel as soon as his boundless vanity has been injured ... But we are all in fault ; not, indeed, you and I, – but the world in general is ever ready to forgive and extol the French, and even calls a grimace-maker like Victor Hugo a genius.⁶¹

The Fall of Paris

While Francis Lieber was following the telegrams from Europe with a sense of delight and patriotic rejuvenation, the besieged city of Paris went cold and hungry. Through the end of 1870, its people dined first on their stores, then their horses, then the city's rats, then the elephant from the menagerie of the Jardin des Plantes, and finally simply on 'the unknown'. The trees of the Champs-Élysées were burned in Parisian hearths. But Victor Hugo, now a sort of patron saint of the city, spent the time in relative comfort. While participating in the affairs of Paris through his writings, plays and fundraiser shows, he also enjoyed to the fullest his final triumph with his fame and celebrity: his unpublished siege journal records him throughout the winter engaging with great enthusiasm in sexual adventures with a considerable number of Parisian women.⁶²

In January 1871, Paris yielded. While the peace negotiations continued in Bismarck's headquarters at Versailles, relief was allowed in the starving city. In early February, new elections were held and Victor Hugo secured for himself a landslide victory. Some weeks later, the Treaty of Versailles brought home the French defeat: France was to cede Alsace and Lorraine, to pay five billion francs in five years (precisely equivalent *per capita* to the Prussian indemnities to Napoleon in 1807), and the National Assembly was to move its seat from Paris to Bordeaux.⁶³ Victor Hugo's stay at Bordeaux turned out very short, however: whereas in Paris he had been a hero of the people and a venerated part of the establishment, at Bordeaux he was sitting across the table from conservative royalists and former men of Napoleon III. In these parts of France, he had less room to act as the magnanimous auteur and poet whose words could always carry a degree of artistic license. He resigned from the Assembly within the month in protest at the rejection of Garibaldi.⁶⁴

61 Lieber to Bluntschli, 26 May 1871, in Perry (ed.), *Life and Letters*, at 412–413.

62 Robb, *Victor Hugo*, at 451–458.

63 The conclusive peace treaty would be the Treaty of Frankfurt, 10 May 1871, in which the Franco-German border was defined, Alsace and Lorraine ceded, and the payment of the indemnities adjusted.

64 'Victor Hugo : Contre l'invalidation de Garibaldi (8 mars 1871)', available at www.assemblee-nationale.fr. See also Hugo, *Actes et Paroles – Depuis l'Exil*, 76–84.

Before his resignation, however, he gave the Assembly a bellicose, revanchist speech against the terms of the Versailles Treaty. Here his familiar sense of drama took a more aggressive form, but at the same time parts of his speech strike in retrospect as a kind of European prophecy. Hugo began by reciting the heroic struggle of Paris and the significance of the city to all of Europe as “the capital of the continent”. He then warned that new conflict would come should Alsace and Lorraine be ceded to Germany: “If this inexorable peace is concluded, Europe will never sleep again. An immense insomnia for the whole world shall begin. Thenceforth will there be two fearsome European nations; one because it is victorious, the other because it is vanquished.” The destiny of Alsace and Lorraine between the two nations would become the kernel of a new war, warned Hugo; Germany would have its Empire and divine right (*le droit divin*), France its enlightenment and the right of humanity (*le droit humain*). And finally Germany could not truly keep the provinces. “Conquest is nothing but rapine,” said Hugo, “right does not arise from fact. Alsace and Lorraine want do remain French; they shall remain French despite everything, because to France belongs the republic and the civilization”.⁶⁵

Then he really got carried away. “France shall not perish! No!” he thundered, “my country does not succumb!” Instead of accepting a defeat, he promised a “*revanche prodigieuse*”. After signing the peace, France would have only one goal; rearmament and a new struggle, which would culminate in the retaking of Lorraine and of Alsace. And it would not stop there, but France would conquer “the entire left bank of the Rhine” – and then came Hugo’s final twist:

*And we shall hear France cry: It is my turn, Germany, look at me! Am I your enemy? No, I am your sister. I have taken everything back, and I return it all to you, on one condition: that from now on we make but one people, one family, but one single republic. ... Let us become the same republic, let us become the United States of Europe, let us become the continental federation, let us become the European liberty, let us become universal peace! And let us now clasp hands, for we have each done one another a service; you have freed me of my emperor, and I free you of yours.*⁶⁶

This, then, was Hugo’s attempt to seize the imagination of his people: he laid out a vision of a terrifying victory over Germany, but this time – *this time* – France would treat Germany the way the Prussians should have treated the Parisians. The United States of Europe would arise from the ashes of total war through the victors’

65 Victor Hugo, ‘Pour la Guerre dans le Présent et pour la paix dans l’avenir’, in Hugo, *Actes et Paroles – Depuis l’Exil*, 51-59.

66 *Ibid.*, 58-59.

mercy. Here the author was reusing his old Myriel trick which had already failed to turn into reality in the siege of Paris. If Prussia had then rejected his magnanimous words, Hugo dreamed of the future armies of France *forcing* it to appreciate them. As a speech in the parliament of a defeated country, the parole might have been as dangerous as it was fantastical. But it also went literally unheeded: among the listeners was one young Parisian representative by the name of Georges Clemenceau, the future convener of the Versailles conference in 1919, who turned out to be no forgiving Myriel when he had his chance to set the terms for a German surrender.

When Victor Hugo was preparing to leave Bordeaux, his son Charles died. As it happened, the Commune of Paris broke out while he was in the city for the funeral. Hugo's presence was eagerly welcomed by the communards, but the writer himself hesitated to support the new revolution. Perhaps this was due to the memory of 1848 in his mind, or maybe he simply calculated that in the inevitable purges ahead he might well end up shot or worse. On the pretext of attending to his son's estate in Brussels, which was at least half a truth, he left France once more. Soon after his departure, blood and fire flowed in the barricades and streets of Paris. The Third Republic extinguished the Commune once and for all in brutal executions and bombardments, finding only smoldering ruins in the place of the Palace de Tuileries and the Hôtel de Ville.

When the retaliations began, communards fled near and afar, and the French government called for them to be detained and handed over. Victor Hugo had one more opportunity to seek the moral high ground. He called in his writings for clemency and patience. When in one last re-enactment of Bishop Myriel he declared his home in Brussels open to all communard refugees – thus challenging Belgium's compliance with French extradition requests – he was expelled from there as well.⁶⁷ At the ripe age of nearly seventy years, Victor Hugo found himself in one last exile, this time a rather pleasant one spent in Luxemburg with a young mistress.⁶⁸ When the executions had finally waned, he returned to France and Guernsey.

V. CONCLUSION

What came of the two great men after the *année terrible*? They both moved on. Francis Lieber only lived until 1872, but he seems to have spent his last days mostly in a good mood. "Seated in your library, with a case involving millions of

67 'Victor Hugo on the Communists', *The Times*, 30 May 1871, pg. 10.

68 Robb, *Victor Hugo*, at 468–471.

dollars depending on your decision, thermometer at 88° Fahrenheit, is no trifle!” he bragged to Bluntschli. But since good news had just come from the Geneva arbitration, he added: “Were I near you I should invite you to take a glass of wine with me, probably iced champagne, to the weal of international law.”⁶⁹ He also spent time pontificating on the advantages of Milton’s *Faust* over Goethe’s, and at times whistling “O Strasburg, du wunderschone Stadt” from his youth. A book of old Alsatian children’s tales and stories should be compiled again, he mused, like back in the good old days, when “every schoolboy had his poems by heart.”⁷⁰

After his death, Francis Lieber was remembered as one of the most renowned international lawyers of the nineteenth century. His most famous work, the Lieber Code, remains famous to the present day, and his particular efforts to humanize the treatment of the sick, wounded, and captured became one of the permanent spearheads of humanitarian law. He was also credited as a sort of godfather for the *Institut de Droit International*, as the constitution of that organ partly originated from his correspondence with Bluntschli and other jurists.⁷¹ His brief but prominent role in the world of international arbitration cannot be ignored either, as the pacific settlement of disputes and the arbitration movement represent a central banner around which the liberal international jurists continue to rally until this very day.

Victor Hugo lived until 1885. Beginning again with the successful *L’Année terrible* in 1872, he picked up his pen with relative ease and went on to experience one more creative season in his twilight years. Although his political career in France was over after the war, he dwelt his last years in comfort, celebrity, and the company of young women whom he never ceased to pursue. He also completed the final tomes of his *Actes et paroles* and took his time to carefully curate his public personality into the quasi-divine form in which Auguste Rodin sculpted him after his death. Jean Cocteau may have had a point when he later quipped that “Victor Hugo was a madman who thought he was Victor Hugo.”⁷² In the view of the present examination, the same observation might be drawn from much of his political activities since his return from exile. As Robb points out, despite all his distress and patriotic duty in 1870-1, Hugo seems to have again surfaced like a cork on the waves of his time; the disastrous capitulation of France had in a way been just another career success for the celebrity author. The language he used for the events – ‘epic’, ‘farce’, ‘tragedy’, ‘comedy’, might as well suggest that “the whole *année terrible* had been a writer’s dream.”⁷³ Retrospective cynicisms aside, the great-man Victor Hugo was finally

69 Lieber to Bluntschli, 28 June 1872, in Perry (ed.), *Life and Letters*, at 426.

70 Lieber to Bluntschli, 30 May 1872, in Perry (ed.), *Life and Letters*, at 425–426.

71 Root, Francis Lieber, at 462–465; Koskenniemi, *Gentle Civilizer*, at 39–41.

72 E.g. Brown, ‘Et tu’.

73 Robb, Victor Hugo, at 470. In Hugo’s defense it must be noted that in his private life he also followed his principle of magnanimity in successful ways, such as when during his exile he repeatedly invited the poor to dine at the Hauteville House and maintained a spare room exclusively for the use of struggling writers in need of shelter and hope.

buried in the grandest of great-man fashions: he was laid to rest in the Panthéon of Paris (“*Aux grands hommes, la patrie reconnaissante*”) before a crowd of two million people – twice the actual population of Paris – and with newspapers pouring glory over his memory the world over.⁷⁴

A sort of epilogue for Hugo’s political thoughts on peace and humanity may be found from the addresses which he wrote in response to invitations to the peace congresses in Lugano (1872) and Nancy (1875). In both texts he referred back to the view which he had adopted during the war; that Europe now faced a choice between German imperialism and French republicanism, and that through great calamities its destiny was to be united. Only one of the two models would eventually prevail. On his own behalf, Hugo put his faith in the ultimate triumph of republicanism. “We shall have these great United States of Europe that crown the old world as the United States of America crown the new”, he wrote; the path to that end was inevitable but it ran through either war or revolution, depending on actions of Germany and the other remaining monarchies.⁷⁵ France had been both liberated from its Empire and dismembered by the loss of Alsace and Lorraine and the occupation of Paris. This was not a mere French tragedy but a disaster for all mankind, as there could be no return to normal growth without restitution.⁷⁶ Yet one day, Hugo politely predicted to his audience of pacifists, peace would prevail:

... when borders vanish between nation and nation, and arise instead between good and evil; when each man makes of his own sincerity a realm in his heart; then, like a day dawns, dawns peace; the day by the rise of the star, peace by the ascension of the law.

*Such is the future. I salute it.*⁷⁷

By the end of the Franco-Prussian war, the traditional peace movement was in shambles, and Hugo’s absence in person from Lugano and Nancy may have not have been entirely due to adverse circumstances. The pieces of that movement were soon picked by Lieber’s disciples when Gustave Rolin-Jaequemyns, John Westlake, Tobias Asser, Johann Caspar Bluntschli, and their colleagues mobilized to bring into fruition their project for a permanent body of international law. In 1873, when both the *Institut de droit international* and the International Law Association were born, Rolin-Jaequemyns declared that “the time has come to move on to something more

74 e.g. Le Figaro, Le Petit Marseillais, The Times, The New York Times, The Manchester Guardian and Åbo Tidning on 23 May 1885; The Washington Post and Le Rappel 24 May 1885.

75 ‘L’avenir de l’Europe’, in Hugo, Actes et Paroles – Depuis l’Exil, 216-219.

76 ‘Au congrès de la paix’, in *ibid.*, at 272-275.

77 *Ibid.*, 274-275.

tangible than vaguely worded wishes and diatribes against warfare”.⁷⁸ The *Institut* grew rapidly beyond its roots, and before long also the French jurists returned to the common table. All were aboard again in the Berlin Conference of 1884, when the great men of Europe united once more in the common cause of the partition and exploitation of Africa.

78 Gustave Rolin-Jaequemyns, 'De la nécessité d'organiser une institution scientifique permanente pour favoriser l'étude et les progrès du droit international', (1873) 5 *Revue de Droit International et de Législation Comparée* 463, 466.