

Dhananjayrao Gadgil Library



GIPE-PUNE-003485

3485

MANUAL  
OF  
POLITICAL ETHICS,

DESIGNED CHIEFLY

FOR THE USE OF COLLEGES AND STUDENTS AT LAW.

*Lex, communis reipublicæ sponsio.*—SENECA.

BY

FRANCIS LIEBER, LL.D.,

CORRESPONDING MEMBER OF THE INSTITUTE OF FRANCE, ETC.;

AUTHOR OF "ON CIVIL LIBERTY AND SELF-GOVERNMENT," "PRINCIPLES OF LEGAL AND  
POLITICAL INTERPRETATION," ETC., ETC.

VOL. I.

---

SECOND EDITION, REVISED.

---

EDITED BY THEODORE D. WOOLSEY.

PHILADELPHIA:

J. B. LIPPINCOTT & CO:

LONDON: TRÜBNER & CO.

1870

---

Entered, according to Act of Congress, in the year 1874, by

MATILDA LIEBER,

In the Office of the Librarian of Congress at Washington.

---

R. 43 (W)

A 876.1

3485.

## PREFACE TO THE SECOND EDITION.

---

THE Political Ethics, of which the second edition is now offered to the public, received very high commendation from some of the first men in the United States on its first appearance in 1838. "Chancellor Kent," says Judge M. Russell Thayer, in his discourse delivered before the Historical Society of Pennsylvania, "commended it in the strongest terms for the excellence of its doctrines and its various and profound erudition, and observed, that 'when he read Lieber's works he always felt that he had a sure pilot on board, however dangerous the navigation.'" In a letter to Lieber, Judge Story said of it, "It contains by far the fullest and most correct development of the true theory of what constitutes the State that I have ever seen. It abounds with profound views of government, which are illustrated by various learning. To me many of the thoughts are new, and as striking as they are new. I do not hesitate to say that it constitutes one of the best theoretical treatises on the true nature and objects of government which have been produced in modern times, containing much for instruction, much for admnition, and much for deep meditation, addressing itself to the wise and virtuous of all countries. It solves the question what government is best by the answer, illustrated in a thousand ways, that it is that which best promotes the substantial intefests of the whole people of the nation on which it acts. 'Such a work is pecu-  
liarily important in these times, when so many false theories are afloat and so many disturbing doctrines are promulgated.'"

Besides these testimonies from the two first jurists of the generation next preceding ours, additional ones from the historian Prescott, from Hallam, and others, may be found in the discourse of Judge Thayer.

Dr. Lieber suffered the edition which appeared more than thirty-three years before his death to become exhausted, without bringing a second before the public. This was not owing to the work having been superseded, nor to want of interest in the subject, nor to unattractiveness of style or method of treatment: on the contrary, it has from its copiousness of illustration, and its earnest, somewhat unscientific manner, a great attraction. But probably Dr. Lieber, whose mind was full of literary projects, never found time to get the work again ready for the press, or he shrank from the tedium of giving it a thorough revision.

The care of a new edition was intrusted by Dr. Lieber's family to the present editor, who will say a word or two on the plan according to which he has attempted to discharge his office. It was found that a large mass of materials, consisting of original notes, quotations from other works illustrative of the author's positions, and clippings from newspapers containing public documents, speeches, or other matter thought to be important enough for preservation, was pasted into a copy of the work. In looking over these materials, the editor perceived that much of all this was not intended for insertion, but was rather "*matériaux pour servir*" for a future revision. Some of this matter, again, had meanwhile appeared in a finished shape in the "*Civil Liberty*." Very few of the author's notes modified his views expressed in the work, and might be passed by without serious loss. And now came up the question how far it was expedient to increase the size of a book already quite large enough for the persons for

whose uses it was designed, and in fact, owing to its copiousness and discursiveness, not seldom overflowing its regular channel. The attempt has been made to satisfy all practical demands by inserting only those notes of Dr. Lieber's which were judged to be of primary value or which bore in the way of modification or correction upon the text. Sometimes this new matter appears in an abridged form; sometimes part of a note is omitted. In all cases these notes are marked in the margin by a star accompanying the numeral used for reference. The notes in general are put at the foot of the pages to which they belong, instead of having their places assigned to them, as in the original edition, at the end of the sections. A very few notes by the editor show their source by being enclosed in brackets. The two volumes are made nearly equal in size by incorporating the earlier chapters of the second part in the first.

In the author's preface to the first volume he acknowledges the kindness of Mr. George S. Hillard in helping him to carry his work through the press,—“a service,” he adds, “which those especially will know how to appreciate who write in an idiom which they have not learned from their mothers' lips.” No aid could have been more valuable; but a swarm of small corrections, which needed a responsible editor's eye, still remained to be made. The editor has not scrupled to make them, while he has been inclined to allow some new-coined words, and some double forms (like *ethic*, *ethical*, *monarchic*, *monarchical*), to remain uncorrected or unharmonized. The citations through the book, so far as they referred to authors within the editor's reach, have been verified, and in general found to be correct.

THEODORE D. WOOLSEY.

NEW HAVEN.

## PREFACE TO THE FIRST EDITION.

---

THE work itself will show the precise branch to which I have assigned the name of political ethics: it remains for me only to give here the assurance that the second part, containing a discussion of those many relations in which a citizen finds himself called upon to act, and for which, however important, the positive law does not or cannot furnish a sufficient rule of action, will be offered to the public at the beginning of the next year, if I remain in health.

The present volume forms, as may be conjectured from the title, a separate whole of itself, and has for that reason been called part first, and not volume first.

In carrying the work through the press, I have derived great advantage from the valuable advice and indefatigable kindness of my friend Mr. George S. Hillard, of Boston. He has done to me, and, I fondly hope, through me, to the public, a service which literary men will know how to appreciate, especially those who write in an idiom which they have not learned from their mothers' lips.

COLUMBIA, S. C., August, 1838.



# CONTENTS.

## PART I.

### BOOK I.

#### ETHICS IN GENERAL; POLITICAL ETHICS IN PARTICULAR.

##### CHAPTER I.

Science.—Name and Subject of Ethics.—Sympathy or Fellow-feeling.— The Human Intellect.—Thinking, Reflection.—Difference of Mental Action in Animals and Man.—Experience of Animals.—Animals do not exchange Labor or Produce.—Instinct.—Combinatory Action of the Animal Mind . . . . .	PAGE 17
---	------------

##### CHAPTER II.

Sensuality and Rationality.—Man can determine his own Action—is free.— Animal Affection.—Right and Wrong; Ought and Ought not.—Con- science.—What it is.—Its Origin.—Locke's Opinion discussed.—Univer- sality of Conscience.—Uniformity of Moral Codes and Views.—The Thugs and Battas.—Can we explain Man's Moral Character by Sympathy alone? . . . . .	31
---	----

##### CHAPTER III.

Ethic Character of Man.—How does Conscience act?—Is it alone an Oracle or perfect Index?—Practical Moral Law.—Man's Individuality.—Morality founded upon it.—Our Ethic Character is inalienable, hence our Respon- sibility likewise.—Ethic Experience and Skill.—Various Ethic Systems .	53
--	----

##### CHAPTER IV.

Man, a Being having his own End and Purpose, or an <i>Ens autoteles</i> .— Natural Law.—Its only Axiom.—Its Object.—Difference of Natural Law and Ethics.—Science of Politics.—Disastrous Consequences of confound- ing Natural Law and Politics proper.—Good Faith necessary wherever Man acts.—Political Ethics.—Its relation to the other Sciences which treat of Man . . . . .	67
---	----

## CHAPTER V.

	PAGE
Does Political Ethics deserve to be treated separately?—Can Ethics be applied to Politics?—The People at large ought to know their Political Duties.—Political Ethics not for the Statesman alone.—Demoralizing Effect of a politically debased Society upon the Individual.—Political Ethics especially important in Free Countries.—Attempts of Governments and Nations to justify Public Crimes, which proves that Men agree that public Acts ought to be founded on Ethic Grounds.—Ethics cannot be applied to Politics precisely as to Private Relations.—Mere Expediency; mere Theory . . . . .	76

## CHAPTER VI.

Does Religion or Common Sense dispense with Ethics in Politics?—Hume's View of Common Sense.—What is Common Sense?—It does not dispense either with a proper Knowledge of Politics and Ethics, or with constant Exertion and much Industry . . . . .	90
--	----

## BOOK II.

## THE STATE.

## CHAPTER I.

The Law is everywhere.—What is Law?—Sociality.—Origin of the Family.—Of Society.—Everything conspires to lead Men to Society.—Strong and natural Ties in Family Affection, Language, Division and Union of Labor . . . . .	99
--	----

## CHAPTER II.

Property.—Mine and Thine.—Origin of Property.—Various Titles.—Individual Property is necessary for Man.—Does not arise from Man's Iniquity.—Man never lives or can live without Property.—Slow Development of Property.—International Acknowledgment.—Copyright.—Property among Agriculturists.—Civilization and Population depend upon it . . . . .	108
--	-----

## CHAPTER III.

Civilization.—What does it consist of?—Requires Society.—It develops Man, is his truly Natural State.—Futile Dreams of Innocence and Virtue without Civilization.—Shepherds are savage.—Destiny of Woman.—High Importance and Sacred Character of the Family.—Virtues developed by it.—The true Nursery of Patriotism . . . . .	127
---	-----

CHAPTER IV.

	PAGE
What is the State?—By what Characteristics does it differ from the Family?	
—The State a Society.—Various Human Societies, according to the various Relations.—Relations of Consanguinity, Exchange, Comity, Intellectual Communion, of Right.—What is Right?—The State is the Society of Right.—The Just is its Fundamental Idea.—Objects of the State.—What is Protection?—The State requires General Rules; its Members are not absorbed by it; every one has Claims upon it; it is a Moral Society; it exists of Necessity.—The State remains a Means.—The Individual above the State; the State above the Individual.—The State, as such, has Rights and Obligations; the State does not make Rights, but acknowledges them.—Civilized States far the most powerful.—Man by Nature a Political Being.—Man never exists without the State.—The State is no Insurance Company.—Protection of Life and Property not the only Objects, nor the highest . . . . .	145

CHAPTER V.

Legitimate Objects of the State.—Danger of Intermeddling Legislation; Instances.—Primordial Rights and Claims.—Physical Life and Health.—Law of Necessity.—Personal Liberty.—Right of Individuality; no Absolute Obedience possible.—Right of Share in the Protection of the State.—Jural Reciprocity.—Right to be judged by Laws, and Laws only.—Right of Communion or Utterance.—Liberty of the Press.—Right of Morality.—Immoral Laws, no Laws.—Right of Honor, Reputation.—Family.—Religion, Creed, Worship.—Right of Property, Acquisition, Exchange.—Right of Emigration.—Inalienable Rights.—State cannot take Revenge; the Crown cannot feel Wrath.—Political Absurdity of speaking of King's Anger or Nation's Revenge as Political Body . . . . .	172
---	-----

CHAPTER VI.

The State necessarily comprises all.—No one can declare himself out of it; no one can be considered out of it.—Different Meanings attached to the word State at different Periods.—Mankind divided into many States.—Why?—Sovereignty.—Definition.—There were never individual Sovereigns before the Formation of the State.—Who is the Sovereign?—Manifestations of Sovereignty.—Public Opinion, Generation of Law, Power.—Public Opinion.—Law: what does it consist of?—Public Will.—Nature, Common Sense, Custom and Usage, Common Law, Charters, Codes and Statute Law, Decisions, Precedents, Interpretation, Authentic Interpretation, Digests.—Judge-made Law, so called.—Power rests with Society, cannot rest anywhere else.—Government, what it is.—Various Kinds of Governments as to their Origin.—Always rest on Opinion.—Importance of distinguishing State, Government, Sovereignty, Supreme

	PAGE
Power.—Divine Right.—Monarchs called of God.—Frederic's and Joseph's View.—No Monarch ever was or can be Sovereign in the true Sense.—Meaning of the word Sovereign if used of the British Monarch.—Declaration of Rights.—True Relation of Monarch and People.—Can the King really do no Wrong, constitutionally or legally?—He can do so, and it has been decided that he can.—British Monarch the Fountain of Honor.—Its Meaning.—Different Title of Monarchs; some of the Land, some of the People . . . . .	210

## CHAPTER VII.

Public Power.—Why necessary.—Why must it be restrained?—Abuse of Power general.—Man justly loves to act, to produce, to effect something.—It is the inherent Character of all Power to increase if unchecked.—Power delights, and is not willingly given up.—Power, in all Men and all Spheres, is irritated at Opposition.—Man judges according to his Position, those in Power differently from those out of it.—Power is in its Character imposing . . . . .	264
---	-----

## CHAPTER VIII.

Legitimacy of Governments.—Governments de jure, de facto.—Divine Right.—Legitimacy of Governments with Reference to International Intercourse.—Can the Legitimacy of Government be ascertained by its Origin?—Filmer, Locke, Rousseau, Haller.—The Origin of all States essentially the same; yet Infinity of Circumstances which influence and modify its Development.—Ancient View on the Origin of Governments.—Aristotle, Polybius.—Various Theories.—Social Contract.—Various <i>Pacta</i> .—Hobbes, his Error.—Theocratic Theory . . . . .	275
--	-----

## CHAPTER IX.

View of the Origin and Character of the State in the Middle Ages.—Dante.—Thomas More.—Bodinus.—The Netherlands first proclaim broadly that Monarchs are for the Benefit of the People, and may be deposed.—The Development of the Idea of the Sovereignty of the People owing to the Jesuits.—William Allen.—Persons.—Bellarmin.—Jesuits defend Regicide under certain Circumstances.—Mariana.—Suarez.—Luther.—Calvin.—Bacon.—English Revolution a great Period for liberal Ideas in Politics.—Puffendorf.—Leibnitz.—Montesquieu.—Hume.—Quesnay.—Turgot and Malherbes.—Mably.—Adam Smith.—Blackstone.—Delolme.—Bentham.—Hallam.—Revolution of 1830 . . . . .	297
--	-----

## CHAPTER X.

Various Standards of great Political Periods.—The Government must depend upon given Circumstances and Materials.—Which is the best Government?—Errors as to an Ideal Government.—Governments cannot	
---	--

## CONTENTS.

13

PAGE

be made in the Closet, or decreed.—Characteristics of a good Government.—Civil Liberty.—What it is.—Errors respecting it.—Majority and Minority.—The Majority are not the People.—The Athenians checked their own Power.—Great and true Value of Representative Government.—Whoever has the Power, One, Many, or the Majority, may abuse it, and must be checked . . . . . 310

### CHAPTER XI.

Political Atony one of the greatest Evils.—The Ancient Tyrannies.—Variety of Means to check the Abuse of Power.—Can Power be controlled?—Who controls the controlling Power?—Constitutions.—Are written Constitutions of any Value?—Constitutions are Indispensable.—Various Reasons why and Circumstances when Written Constitutions are desirable or necessary.—Division of Power: Legislative, Executive, and Judiciary.—Great Danger resulting from Confusion of these Branches, in Republics as much as in Monarchies.—Importance of the Separation of the Executive from the Legislature.—Vast Importance of an Independent Judiciary.—What does Independent Judiciary mean?—The farther Political Civilization advances, the more independent does the Judiciary become . . . . . 334

### CHAPTER XII.

Classification of Greek Constitutions by Aristotle.—Classification of Governments according to the Number of those who hold the Supreme Power.—Polity: Meaning in which it is used in the Present Work.—Autarchic and Hamacratc Polities.—Autarchy, Hamarchy.—Absolutism.—Democratic Absolutism.—Different Operation in the Autarchy and Hamarchy.—Hamarchy materially republican in its Character.—The Polity of England is a Hamarchy.—The Polity of the United States likewise.—Hamacratc Character of the City of Rome.—Hamarchy rises with the Teutonic Race.—Anglican Hamarchy . . . . . 351

### CHAPTER XIII.

Political Spirit of the Ancients.—The Ancients had not what we call Law of Nature.—Essential Difference between the View of the State taken by the Ancients and the Moderns.—Greek Meaning of Liberty: absolute Equality, even disavowing the Inequality of Talent and Virtue.—Protection of the Individual, first object of the Moderns; the Existence of the State, of the Ancients: hence high Importance of Judicial Forms with the Moderns.—He who has Supreme Power, be it One, Many, or All, must not sit in Judgment.—Greek Laws often very oppressive to the Individual.—The most private Affairs frequently interfered with.—Socrates' View of the State.—Lavalette, Hugo Grotius, and Lord John Russell, on the other hand.—Ostracism.—Causes of the powerful Change in the View of the State.—Christianity.—Conquest of the

	PAGE
Roman Empire by Teutonic Tribes.—Feudalism.—Increased Extent of States.—Printing.—Increased Wants of Government.—Taxation.—Rise of the Third Estate.—Increased Industry.—Discovery of America	358

## PART II.

## BOOK III.

## POLITICAL ETHICS PROPER.

## CHAPTER I.

Reciprocal Relation of Right and Obligation.—The more Liberty, the more Rights, hence the more Obligations.—Danger of Absolutism in Republics, without due Attention to Political Ethics.—Additional Reason of their Importance derived from our Race.—Another Reason, from the Period in which we live and the Direction which the Study of Political Sciences of late has taken.—Private Morality necessary for Public Success, especially in Free States, yet not sufficient.—Justice and Fortitude or Perseverance chief Virtues in Political Life.—Justice the Basis of the other Virtues.—Reputation of Individuals and States chiefly founded upon it.—Power and Passion equally apt to blind against Justice.—Justice affords Power.—Coteries are unjust because they see distortedly.—May we do what the Law either positively, or by not prohibiting, permits?	383
--	-----

## CHAPTER II.

Perseverance.—Justus et tenax.—Necessity and great Effects of Perseverance.—To persevere, our Purpose ought to be good, the Means adapted to the Purpose and the Purpose to the Means; the Means concentrated.—Repeated Action may supply Power; undaunted Perseverance may finally decide by a Trifle.—Fortitude.—Alarmists.—Excitement and Injustice.—Rabies civica.—Calmness of Soul.—Political Fretfulness.—Great Souls are calm.—Peevishness.—Political Grumblers (Frondeurs).—Chief Points respecting Firmness.—Consistency.—Inconsistency.—Obstinacy	412
---	-----

## CHAPTER III.

Moderation.—Excitement.—Passion.—Revenge.—Obscuration of Judgment by Excitement.—Honesty.—Veracity.—Kant's Opinion.—Honesty in Money Matters.—Desire of Wealth.—Love of Independence.—Poverty; its Effect on Public Men in ancient and in modern Times.—Necessity of being free from Debt.—Liberality.—Peculation.—Bane of Public Covetousness.—Public Defaulters.—Periods of Speculation.—Smuggling	438
--	-----