American Political Science Review (2021) 115, 3, 1034–1047
doi:10.1017/S0003055421000411 © The Author(s), 2021. Published by Cambridge University Press on behalf of the American Political Science Association.

How to Read James Fitzjames Stephen: Technocracy and Pluralism in a Misunderstood Victorian

GREGORY CONTI *Princeton University*

This paper offers a new reading of the political thought of the mid-Victorian jurist and intellectual James Fitzjames Stephen. Contrary to impressions of Stephen as a conservative or religious authoritarian, this article recognizes the liberal character of Stephen's thought, and it argues that investigating Stephen's liberalism holds lessons for us today about the structure of liberal theory. Stephen, the paper demonstrates, articulated robustly both technocratic and pluralistic visions of politics. Perhaps more stridently than any Victorian, he put forward an argument for the necessity and legitimacy of expert rule against claims for popular government. Yet he also insisted on the plurality of perspectives on public affairs and on the ineluctable conflict between them. Because both of these facets existed in his work, he fit within the liberal ranks, but he did not show how the two dimensions fit together. The tension that we discover from reading Stephen is, the article concludes, not peculiar to him, but a permanent feature of liberal theories, which always include both technocratic and pluralistic elements.

Recent years have heard many diagnoses of a "crisis of liberalism." Much commentary along these lines proceeds ahistorically, as though present discontents had no prior analogs. This tendency is unfortunate, for the history of political thought can help us think about current dilemmas at one remove, so to speak. We can not only discover difference and therefore contemplate roads untraveled (e.g., Skinner 1998), but we can also, through finding points of resonance between past thinkers and schools and those of today, gain insight into perennial dilemmas and tensions that inhere in our basic frameworks of thought about politics—and can consider these areas of commonality with a dispassion difficult to achieve when current controversies are directly before our eyes. In the words of the philosopher-historian Marcel Gauchet (2007, 44), "nothing is weightier than convergences across a distance."

Present concerns about the fortunes of liberalism, then, invite us to turn to liberalism's history for insight. This is, moreover, an opportune time to take such a turn, as we are in the midst of a revisionist moment in the historiography of liberalism that has made the subject one of the most vibrant literatures in political theory/intellectual history (Selinger and Conti 2020). One finding of this scholarship has been precisely that liberals have often believed their creed to be in crisis—perhaps unsurprising for an outlook to a large degree forged in the fire of the French Revolution (Rosenblatt 2019).

Indeed, even during what we commonly now call the "heyday of liberalism"—Great Britain of the 1850s–1880s—many political thinkers were already convinced that liberalism was in distress. One such figure was James Fitzjames Stephen. Stephen's sophistication and depth as a liberal thinker was for a long time obscured by his being identified with conservatism, authoritarianism, and reaction.[1] That the Victorian jurist and public moralist should have been pigeonholed in this way is not without cause: after all, he remains best known for his *Liberty, Equality, Fraternity*, which struck a lasting blow against the "pontifical authority" of John Stuart Mill (Schneider 2007). But while Mill has come to stand now as *the* canonical liberal, in Victorian Britain he did not yet have this totemic status, and many criticisms of Mill came from inside the liberal camp. Such was the case with Stephen; even if his critiques were considered particularly bitter and acerbic, he was taken by his contemporaries to be a representative thinker at a time when liberalism was "the operative political creed of most Englishmen" (Morley 1873a; Thompson 1951). The truth, as recent scholarship is showing, is that Stephen fell, and was understood to fall, within the broad tent of liberalism, even if there were elements of popular liberal discourse and the Liberal party from which he dissented.[2] He belonged to a set of authors a generation junior to Mill, amongst whom were luminaries like the great moral philosopher Henry Sidgwick, who believed that "true" liberalism was being eclipsed by newer social movements for which they lacked sympathy (von Arx 1985). While scholars have now located Stephen more appropriately on the ideological spectrum, we have not yet

Gregory Conti, Assistant Professor, Department of Politics, Princeton University, gaconti@princeton.edu.

Received: November 24, 2020; revised: February 17, 2021; accepted: April 27, 2021. First published online: June 04, 2021.

[1] The locus classicus for this interpretation is Kirk 1960. For a sampling of recent works that follow in this vein, see Vernon (2007), Lecce (2008), Pyle (1994), and Kekes (1998). Posner (1991) comes closer to the reading offered here. Yet, while Posner acknowledges that there are "libertarian" dimensions of Stephen, he still reads Stephen as an "authoritarian" and makes important errors (e.g., about Stephen's religious beliefs) that lump Stephen in with "conservative" attitudes. He also does not attempt an analysis of Stephen as a political theorist, or take seriously Stephen's own self-understanding as a liberal.

[2] E.g., the editorial introductions to the five available volumes of Oxford University Press's *Selected Writings of James Fitzjames Stephen* series: Rodensky (2013), Smith (2014), Schneider (2015), Tolley (2017), and Stapleton (2017). See also Stapleton (1998), Jones (2017), Conti (2016; 2021b; Forthcoming).

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

had an analytical reconstruction of the key components of his liberalism. This essay hopes to fill this gap.

Arriving at a more accurate account of the liberal ideas of a writer whose rhetorical force and keenness of insight are lauded to this day is intrinsically valuable; moreover, given that Stephen loomed large in Victorian intellectual and public life, gaining greater clarity on his thought is a significant contribution to the study of the history of nineteenth-century liberal theory, where much energy has recently been directed. Most of all, though, a detailed understanding of Stephen's thought illuminates the structure of liberalism itself. Contrary to those who see "intellectual archeology" and the "exploitation" of past texts for presentist insights as being at odds (Vermeule 2015), greater historical/contextual accuracy and interpretive nuance fortunately tend to heighten past thinkers' ability to speak to us now (Tuck 1989, viii). The harmony between more refined historical understanding and relevance to modern politics holds particularly true of Stephen, for his intellectual virtues and vices combine to provide his writing with a unique cogency. He had the excellence of the advocate in appealing robustly to "common sense," as well as an extraordinary ability to articulate the strongest version of an outlook or "style" of thought (Bourke 2018). On the other hand, he did not write systematically in any field but legal reform. If this deficiency rightly keeps him from being placed among the likes of Hobbes, Hume, or Mill, it has the advantage that it makes the fissures and strains within his thought more evident. It is easier to glimpse, in a writer like Stephen, the ways in which common modes of thought might be riven or divided than it is to perceive these fault lines *either* in political philosophers, where the sheen of system can lull us into accepting uncritically that there is a harmony among the various values, premises, and reasons they put forward, *or* in contemporary debate, where we tend to operate on the presumption that a whole package of positions stands or falls together.[3]

In particular this essay argues that the central dilemma of Stephen's political thought is one that has been constitutive of liberal theories from their inception and remains acute today. For under the heading of a "crisis of liberalism" are subsumed several sorts of anxiety, among which two are especially prominent: (a) that a distrust of experts and a contempt for facts and science are rendering impossible the construction of appropriate policy solutions to social problems and leading to failures of governance and (b) that intolerant movements and univocal representations of the "people" or the "nation" are undermining the foundations of pluralism. In other words, we worry that liberalism is in trouble because both evidence-driven, enlightened governance *and* toleration and deliberation among a variety of views are under threat. To be healthy, liberalism, it is oftener assumed than stated, must be both technocratic and pluralistic.

In Stephen's liberalism one finds these two strands brought out with special clarity. For Stephen was distinctive in expressing *both* aggressively technocratic *and* radically pluralistic lines of thought without seemingly having felt any need to weave the two into a coherent whole. Yet, precisely because Stephen did not bring these two impulses together, in his work we observe *both* that each of these ideals has a powerful pull of its own *and* that nonetheless without holding both of them Stephen could not credibly be considered a liberal. The fabric of liberalism is, as it were, stretched to its limits in Stephen's oeuvre. Hence there is a strikingly Janus-like quality to his thought, and one that opens up possibilities for reflection on a tension that has recurred within the liberal worldview over the centuries and is especially noteworthy today. Accordingly, this essay first reconstructs the two faces of Stephen's liberal theory and then concludes with reflections on the broader trajectory of liberal ideas.

BIOGRAPHICAL PRELIMINARIES

Stephen is a significant point of reference for legal academics as well as historians of Victorian Britain. He is, though, admittedly not top of mind among scholars of politics; in political theory, as noted above, he (misleadingly) appears, when he appears at all, as a touchstone for conservatives or as an authoritarian bugbear (Muller 1997). Some background information is therefore in order. James Fitzjames was born in 1829 to a prominent family on the Evangelical wing of the rising "intellectual aristocracy," the upwardly-mobile but (generally) non-noble milieux who would dominate the professions, administrative state, and universities as these were reformed over the course of the century (Annan 1955; Smith 2012). His father was James Stephen, an important administrator in the Colonial Office who, among other achievements, wrote the Slavery Abolition Act. His brother was the historian-essayist Leslie Stephen, who in turn was the father of the novelist Virginia Woolf and the painter Vanessa Bell; Albert Venn Dicey, still the greatest English constitutionalist, was his cousin. Unlike his brother, who made his living solely through letters, Fitzjames was first and foremost a man of the law. As a barrister he was involved in several noteworthy cases, and he finished his career as a High Court judge; in between he held various administrative posts of note, including a three-year stint as Legal Member of the Imperial Legislative Council in India, where he made an enduring mark as a codifier of Indian law. Through it all he wrote an astonishing amount, the majority of it for a periodical press that, compared with the likes of the *Atlantic* or *New York Times* today, was both more cerebral and more vituperative; these writings fell in such disparate areas as (what we would now call) political commentary; literary criticism; criminal and constitutional law; legal, imperial, and intellectual history; theology; epistemology; and political theory. His productivity was so

[3] Stephen typifies what Jan-Werner Müller (2009) calls an "in-between figure," one who while not a "political philosopher" in the conventional sense played an important role in shaping modern ideologies through the professions, civil service, and public debate.

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

inordinate that it even drew wry wonderment from J. S. Mill, himself hardly a literary slouch (Mill 1963–91, XXXII, 206–7). Sadly for political theorists, the one writing ambition that Stephen did not fulfill was a long-projected tome of constructive social-political philosophy (O'Grady 1987).

JAMES FITZJAMES STEPHEN: AGGRESSIVE TECHNOCRAT

When *Liberty, Equality, Fraternity* came out in 1873, the American intellectual/editor Charles Eliot Norton hailed this famous work, which attacked Mill and (what Stephen condemned as) other sacred cows of the era, as a landmark of "non-sentimental political discussion" (Norton 1913, I, 469). It was a description after Stephen's own heart. Stephen conceived of himself as opposing the "popular" upsurge of "enthusiasm," as resisting "the pure despotism" of "irritable, noisy minds" and "effeminate understandings" who trusted that society would be perfected if only governance were brought into accord with their exultant feelings (Stephen 2017, 24–5; also 1857a; 1857b; 1859a). The "puerility and narrow-mindedness" of "modern philanthropy," the certainty of the "the world-betterer[s]" that their hearts could guide public policy, were scourges that he felt compelled to eradicate (Stephen 1866a; 2017, 167–8).

The principal trouble that these forces posed was that they led people to underrate the need for intellectual excellence in the conduct of modern states. "All the instincts and feelings and all the faith that ever existed in the world are incompetent to enable a person to enunciate one single true proposition"; "there is only one type of politician who is of much use, namely the politician who has and acts upon true views," yet only a fraction of the population were capable of such possession of truth (Stephen 1866c, 1217–18).[4] A small elite alone were capable of governing well; the political weight of people beyond these rungs ought to be minimized:

> Those only are entitled to the description as well as to the name of liberals, who recognize the claims of thought and learning, and of those enlarged views of men and institutions which are derived from them, to a permanent preponderating influence in all the great affairs of life.
> The minority are wise and the majority foolish … in my opinion the wise minority are the rightful masters of the foolish majority. (Stephen 1862b; 2017, 10)

Quotations to this effect could easily be multiplied; Stephen was among the most ardent upholders in his generation of "the role of the intellect in the direction of national affairs" (Parry 1986, 77).

It is not unusual to encounter paeans to the rule of the "best" or the "wisest" in classical, medieval, and early-modern texts. Yet Stephen did not believe himself to be repeating orthodoxies from classical republicanism about the greater virtue of property holders or aristocratic arguments in favor of the superiority of a hereditary ruling caste. Unlike the reactionaries or antimodernists with which he is sometimes associated, Stephen "did not fear change" as such; rather, he feared that a governing class equipped for the challenges of modernity might not materialize (Lippincott 1938). Likewise, *contra* Burke, with whom he has too readily been lumped (Hajdenko-Marshall 2012), he had no reverence for traditional hierarchies as such. In truth, in keeping with the contempt he expressed for conservatism as he understood it (Stephen 1882b), Stephen dissented from many of what are taken to be core articles of the conservative tradition.[5] Devotion to conserving the present powers-that-be, let alone to returning to an idealized past stage of society, had no appeal to him.

Stephen's conviction of the low aptitude of most men did not, then, translate into a wish to halt the march of history. Instead, it led him to articulate a distinctly *technocratic* notion of the rule of the few. Stephen vindicated the hegemony of an elite constituted not by blood, heredity, wealth, divine inspiration, or charisma but instead by expertise, technical savoir-faire, efficient management, and educational achievement. Likewise he tended to picture the virtues of technocratic governance as tethered to conceptions of "science" and mastery of "rational" methods, as distinct from older "statesmanlike" ideas of Burkean prudence or Aristotelian phronesis. While "technocracy" is a coinage of the early twentieth century and consequently Stephen did not have the term, he certainly espoused the ideal that the word was coined to convey—namely, "a system of government in which experts organize and control the nation's resources for the good of all" (Rosanvallon 2013, 48).

As far as possible, Stephen contended, political power had to be reserved to an educated cream of the crop because tackling great problems of social organization demanded "special knowledge" (a phrase he incanted frequently). The most glaring defect of Victorian civic attitudes was the underrating of "the importance of special knowledge" (Stephen 2017, 152). Not only were the vast majority not themselves equipped to devote "real intellectual activity [to] political matters" outside the immediate purview of their personal lives; they did not even grasp that there existed, as he confidently asserted, "political" truths that were as real as

[4] This essay is extremely likely to have been written by Fitzjames, although it falls into a category of article for which we have only (albeit convincing) circumstantial evidence of having issued from his pen (Roach 1953).

[5] For example, he did not see prejudice as a source of imbedded wisdom; he did not treat the landed aristocracy as a specially beneficent political class; he was hesitant about the political effects of religion, and by the end of his life had become openly critical of the social-moral value of Christianity as it had evolved in late nineteenth-century England; and he was favorable to the French Revolution, condemning Continental *anciens régimes* generally and specifically "the invidious position of the French privileged classes" (2017, 153; 1865e)

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

"mathematical truths" (Stephen 1866c, 1). Beyond a baseline of natural aptitude with which few were endowed, technical adeptness gained from long study was vital to fundamental areas to statecraft, the paradigm for him being (naturally given his profession) the law (Roach 1957). "The number of people," as he put it bluntly,

> who are able to carry on anything like a systematic train of thought, or to grasp the bearings of any subject consisting of several parts, is exceedingly small. … The work of governing a great nation, if it is to be done really well, requires an immense amount of special knowledge and the steady, restrained, and calm exertion of a great variety of the very best talents which are to be found in it. (Stephen 2017, 150)

This was "emphatically the age for special knowledge and study, the age for engineers, men of science, lawyers and the like," and only by remodeling the apparatus of state to better reflect the intellectual habits and virtues of these professions could politics be redeemed from its "perfectly disgusting" condition (Stephen 1879).

Further, Stephen did not imagine that his elite simply established efficient instruments or practices to meet goals set elsewhere. In his eyes, the distinction between means and ends in political affairs was porous and contestable and, in any case, of little relevance in theorizing the distribution of political power because only the enlightened substratum had the requisite moral insight for "rigid adherence to the … general utility" (1866c, 1). Being moved by "passion" and "imagination," most people were not responsive to reasons, nor did they develop their rational faculties appropriately (Stephen 1863a). This left them unfit to answer questions of values or ends: "the intellect alone can judge what is the object of morality, and whether or not particular rules are calculated to promote that object" (Stephen 1863b, 607). For Stephen, all successful practical reasoning—and indeed, all reasoning *simpliciter*; he was adamant that the principles of "argument and evidence" were fundamentally one from morals and law through the natural sciences (1865b)—relied not just on raw mental power but also on moral-temperamental qualities the cultivation of which necessitated achievement in the liberal (in the old sense of the word) disciplines. Like many Victorian liberals, Stephen prescribed a robust regimen of intellectual virtues: impartiality, earnestness, thoroughness in scrutinizing authorities, the acuity to give credence to a proposition only so far as the evidence bore it out but not further, and "moderation" to avoid getting carried away with alluring but one-sided theses (2017, 77). Government in the absence of these attributes was calamitous. In recognition of the need for this technocratic approach to politics lay what Stephen dubbed "true liberalism" (1862b, 82).

Outside of legal reform, Stephen was more naturally a critical than constructive thinker, and we can get a better grasp on what the technocratic ideal entailed for him by looking at what he considered its enemies.

First, Stephen saw it as threatened by what we would now call (the term was not in mainstream circulation then) *libertarian* currents of thought. Stephen fretted that liberals were drifting from their rationalistic, elitist conceptions of reform and instead becoming enthralled to an exaggerated idolatry of individual liberty (2017, 94; Morley 1873b). According to this "religious dogma of liberty," government was to restrict itself to "mere police functions" and leave "everyone indiscriminately … to do what he likes" (2017, 25, 148). This outlook, he charged, amounted to "a mean and cowardly" abdication of the rightful elite's duty to the population; the former owed it to the latter not to maximize the liberty of each among them but to govern them well according to criteria that the elite alone was fit to determine: "wise and good men ought to rule those who are foolish and bad" (2017, 10, 148). Nor did the wise need to be bashful about using law to set a direction for the country they knew to be beneficial because of the "force" that lay behind it (Leslie Stephen 1895). "Coercion" was an instrument for improving humanity no more morally suspect than any other; what mattered only was that the "compulsion" be exercised efficaciously for an all-things-considered "good" purpose (Stephen 2017, 32–3). Indeed, no great improvement, from the spread of Christianity to the Reformation to the French Revolution, had been accomplished without force (Stephen 2017, 33; also 1865c).

Stephen was confident that his technocratic riposte to the radical-liberal propensity to "attack all government whatever" held true perennially. Nevertheless, this lesson, as indicated by his previously quoted assertion that this was "emphatically the age" for government by specialists and experts, was intended to be especially apposite in modern times (Stephen 1879; also 1874a). For with "the affairs of both nations and individuals … constantly tend[ing] to become more and more complicated, and to require greater attention and management," the premium on "skill," "special knowledge," "highly instructed, large-minded, and impartial intellect" to run "a powerful, well-organized, and intelligent government" and to craft the many "laws" needed "on pretty nearly every subject which can be mentioned" was higher than ever and would continue to rise (Stephen 2017, 112; also 1873d). In linking the need for a strong, expert-led state to a historical vision of the rise of social "intricacy" and complexity, Stephen beat later theorists to a theme that would be central to the growth of the administrative state over the twentieth century (Stephen 1873d; Vermeule 2021).

The "sentimental" worship of liberty that would deny "the wiser part of the community" the pursuit of the public welfare "on a large scale" was, then, a first target of Stephen's apologia for vigorous technocracy (2017, 35, 57). A second was democracy. In Stephen's eyes, these two foes were connected both practically and conceptually. In practice, the multitude were obviously too "ignorant" to appreciate the finer points of legislation/administration; they could be interested in matters of state only through the manipulations of demagogues and shady operatives that misled rather than edified them (Stephen 2017, chap. 5). Here Stephen was

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

rehearsing longstanding antidemocratic tropes, although he attached to them themes of democratic-skeptical argumentation that would gain more currency later (e.g., Hirschman 1991; Schumpeter 1942). Importantly, this ineptitude carried with it, in Stephen's analysis, more than a dash of libertarianism—a not unsurprising link to draw in an era where radicalism was closely identified with aspirations to prune perceived government bloat (Biagini 1992). Hostility to democracy therefore followed from a conviction that a true liberalism of "national greatness" demanded that far-seeing, well-trained governors be insulated from popular clamor for cheap and short-sighted policies:

> It is a difficult task to impress [lofty views] upon any body of men, and the difficulty increases in direct proportion to the ignorance and poverty of those who belong to it. An ignorant man cannot without great difficulty rise to anything like an adequate conception of the importance and permanence of the results of national policy. A poor man feels at once the sacrifices which such a policy often entails, and ignorance and poverty foster those petty, huxtering, narrow-minded views of both this world and the next, which are the greatest enemies of the policy which befits a great nation. (Stephen 1862b, 76; Stapleton 1997)

Beyond this practical fear of democratization bringing reflexive small-statism in its wake, the two enemy movements were in his eyes connected by another conceptual route. For the "worship" of liberty by nightwatchman-state proponents and the "worship" of equality from universal-suffragists shared a fallacious exaltation of individual reason that undercut beneficent technocratic authority (Stephen 2017, 153). Democrats' assertion of equal political power rested on effacing the distinction "between wisdom and folly," on presuming that "mediocrity," "impudence and rudeness" were as much entitled to a voice in public affairs as intelligence and expertise (Stephen 2017, 148, 67). Libertarianism likewise assumed that all men were so reasonable that release from "restraints" would automatically produce the best social outcomes (Stephen 2017, 34). Such optimism ignored "tragedy-of-the-commons"-style collective action problems that only a governing elite could sensibly resolve, and it overlooked the obvious fact that most people were "selfish, sensual, frivolous, idle, absolutely commonplace and wrapped up in the smallest of petty routines" and thus required innumerable control and direction by enlightened authority (Stephen 2017, 158, 39).

For Stephen, as for most Britons before a more rigorous Anglo-American comparative constitutionalism arose at the end of the century, there were two chief paradigms of democracy. The first was the Caesarist regime of Louis-Napoleon in France, which Stephen (like many of his compatriots) understood as wedding a miserable peasant majority under universal suffrage at the bottom with lawless and personalistic rule at the top (1859b; Parry 2001). Stephen was only slightly less pessimistic about the second—namely, democratization under Westminster-style parliamentary government. In an epoch when Britain's institutions were often identified with "good government" itself—this was the so-called classical age of parliamentarism, after all—Stephen was insistent that British self-congratulation on this score was mere complacency (1883a). Parliamentary government was "grievously impair[ed]" (Stephen 1873d, 1). The basic problem of parliamentarism was that it was inseparable from parties, and the force of partisanship would (he rightly predicted) only increase as, limited suffrage giving way to universal enfranchisement, parties were required to function not just as vehicles for notables aiming to corral parliamentary majorities but as centralized extraparliamentary institutions run by "wirepullers" seeking to "sweep the greatest number" of "little bits" into a bigger "heap" than the other side (2017, 146–7). Party government was antithetical to the "steady, restrained, and calm exertion" of the "immense amount of special knowledge" involved in "governing a great nation" (Stephen 2017, 149–50). Most party-political discussion was not merely pointless but harmful, motivated as it was not by evidence or argument but emotion and ambition. "The system of party government … makes every man who is out of office pick holes in the work of every man who is in office, and every man who is in office consider, not what is the best thing to be done, but what he is most likely to be able to carry in spite of opposition"; consequently "in every department of the State … the greater part of [the crucial work of reform] is going and will go undone, and [of that portion which is completed] much of it is ill done simply because there is so little continuity, so little permanent authority vested under our system" (Stephen 2017, 150–1). Given that a knowledgeable, discerning reformer "often lose[s] his seat by differing in opinion from the bigoted part of the constituency on some small question," the quality of personnel was sure to be low (Stephen 1873d, 6).[6] Instead of having the most adroit minds till the same policy field until the harvest came good, "party government … produces an arbitrary connection between measures which ought to be considered on their own merits" (Stephen 1873a, 7). It made him "angry to think that anything of importance should be determined" in such irrational ways (Stephen 1882a).

While Stephen was implacably opposed to Caesarism, his hostility to parliamentary democracy, for all his animated denunciations, was more circumscribed in its immediate implications. Like many in an era awash in Tocqueville, his dislike of democracy was coupled with admission of its inevitable arrival: "the waters [of universal suffrage] are out and no human force can turn them back, but I do not see why as we go with the stream we need sing Hallelujah to the river god"

[6] He continued cuttingly: "the prospects of denominational education in the British Islands will be slightly improved if the Ashantees were to contrive to destroy Sir Garnet Wolseley and his staff. That the immediate prospects of the 25th clause of the Education Act will, for the next few months, vary inversely as … the fidelity and courage of the Fantees and Houssas, is a reflection intrinsically as odd as Mr. Darwin's discovery that domestic cats are the patron saints of humble-bees."

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

(2017, 148). Similarly, he accepted that sole rule of "the well-instructed few" could not with profit displace the present "machinery of government" any time soon—a degree of resignation that angered the most hardened antiparliamentarists (Stephen 2017, 153).[7] Nevertheless, he was fertile in suggesting "partial remedies." These lay in the direction of (1) strengthening the executive qua head of the administrative apparatus, (2) increasing the independence and stability of specialists within the civil service, (3) consolidating the authority of the central state against the localist impulses of English political tradition, and (4) rationalizing the state's structures in such areas as the administration of justice and relief of the poor (Stephen 1873a, 165–79). But the most intractable problem was, ultimately, cultural: how in an era of devotion to equality to inculcate respect for greater intellectual attainments and administrative/technical competence (Lippincott 1931). To lift the "public business" out of its "miserable, fragmentary, scrap-like" condition would require gradually shrinking the area that the public considered "party questions" to cover and convincing the people's deputies to "let" more and more subjects "alone" (Stephen 1866b, 105; 2017, 152). To arrest the trend toward "deifying almost casual public opinions and slight and ineffectual political sentiments," to depoliticize the population so that they would "willingly" defer to their "natural leaders," those "few" who through "a happy combination of personal gifts with accidental advantages" had come to possess "the moral and intellectual superiority" necessary to rule and administer a great state—this was the paramount challenge of political modernity (Stephen 1862b, 80).

In his exasperation with the inconstancy of party politics and the low intellectual level of the Commons's "debating club" dynamics (Stephen 2017, 150; 1868b), Stephen had interesting company. For instance, he shared much with the archetypal theorists of scientific, elite-driven governance in the nineteenth century: Henri de Saint-Simon and his followers, the Saint-Simonians, and in particular the most vibrant branch to have grown off this trunk, the Positivism of Auguste Comte and his disciples (Simon 1963). One scholar aptly summed up these movements as "technocracy with a religious aura" (Guérard 1969). As we will glimpse later, Stephen had no sympathy with the Saint-Simonian/Positivist package of extravagant religious positions. But in the aspiration to build up a bureaucracy of experts and technicians and fortify them against irresponsible partisan meddling—in the longing to replace, as the formula that Saint-Simon inaugurated put it, politics with administration—he resembled these groundbreaking, if eccentric, technocrats (Comte 1865; Saint-Simon 1975). This kinship was, moreover, recognized at the time by English positivists (Harrison 1873a; Smith 1989, 301).[8]

Stephen was, further, every bit the self-confident technocrat in castigating what he judged to be false elites or the imposture of expertise. He could be scathing about the inaptitude of the landed aristocracy; likewise, he was quick to anger about what he considered clerical usurpation or "priestcraft" and had a strong distrust of clergy generally (1865a; also 1860). The mention of his anticlerical attitudes, and the earlier quotations of his use of religious imagery in negatively portraying the "creeds" and "worshippers" of egalitarianism and libertarianism, bring us to the final, and most overarching, enemy of technocracy that he identified: the religious or ideological approach to politics. Stephen believed himself to be living through (what an older historiography called) the "age of ideologies," of "-isms" as he phrased it, and the chief way in which he sought to discredit these grand sociopolitical frameworks was by likening them to religion (1864b). To illustrate just how crucial was this line of attack for Stephen, consider the opening words of *Liberty, Equality, Fraternity*: "The object of this work is to examine the doctrines which are rather hinted at than expressed by the phrase 'Liberty, Equality, Fraternity.' … It is the creed of a religion…. It has its solemn festivals, its sober adherents, its enthusiasts…. These doctrines are in very many cases held as a religious faith" (2017, 23). The prime defect of the Millian perversion of liberalism was that, rather than really being a fact-responsive, empiricist outlook informed by rigorous moral reasoning and conceptual analysis, it had descended into fervent idolatry of mere "mottos" (Stephen 2017, 23). Casting aside all such "faiths" was the precondition for rationalistic government, that is, for rule by those whose mastery of the canons of evidence and whose technical facility had liberated them from distorting religious orientations, whether these came in a transcendental or secular-ideological package (Stephen 1870).

One last feature of Stephen's technocratic elitism merits mentioning. Stephen was not bashful about linking his ideal of domestic government with imperial rule (Stokes 1959). Famously, Mill had attempted to

[7] The acidic authoritarian Thomas Carlyle, for instance, faulted Stephen for showing that the British constitution was "one of the most perfect dust-whirls of administrative Nihilism and absolute absurdities and impotencies; more like an Elective Government apparatus for Bedlam, elected and submitted to by Bedlam, than any sane apparatus ever known before," only to conclude with "the loyallest assurances every now and then that it is the one form of Government for us for an indefinite period; and that no change for the better can practically be contemplated" (1904, II, 300–1). While Carlyle was right that Stephen had little faith in an immediately practicable alternative, Stephen did hold open the possibility of a perfected, exclusive technocracy in future: "It may also be true that the [age of democracy and free discussion] marks a period in human affairs which is no more final than any of its predecessors, and that if in the course of time governments should come to be composed of and to represent a small body of persons who by reason of superior intellect or force of character or other circumstances have been able to take command of the majority of inferiors they will not be likely to tolerate attacks upon their superiority, and this may be a better state of things than the state of moral and intellectual anarchy in which we live at present" Stephen (1883b, II, 376).

[8] Contemporary analysts who identify technocratic programs largely as negative reactions to party government are righter than they know: Stephen, the Positivists, and others of the era already expressed many of the views discussed in, e.g., Bickerton and Accetti (2017).

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

delineate a threshold of societal development, above which coercion only to prevent the individual from harming others was admissible, but below which paternalistic or "civilizing" coercion by a despot or foreign power of greater enlightenment was demanded. Stephen decried this demarcation: "You would let Charlemagne coerce the Saxons, and Akbar the Hindoos. Why then may not educated men coerce the ignorant? What is there in the character of a very commonplace ignorant peasant or petty shopkeeper in these days which makes him a less fit subject for coercion on Mr. Mill's principle than the Hindoo nobles and princes who were coerced by Akbar?" (Stephen 2017, 8, 34–5; Deslauriers N.d.).[9] Stephen was one of many critics then and since for whom Mill's distinction between imperial and European contexts proved too much, as it "seems to apply to every case where a government is far more intelligent than the governed," (Dicey 1914, 147). So long as the British government was wiser than the population over which it ruled, then the domestic political system was better insofar as it approximated the imperial government in India of which Stephen had been a part, and contemporaries took his political theory to be the manifestation of how besotted he was with Indian administration (Cazzola 2019; Harrison 1873b). An assertive technocracy was a kind of domestic imperialism, and Stephen believed it was justified not despite but *because of* that similarity.

JAMES FITZJAMES STEPHEN: RADICAL PLURALIST

Stephen was, then, a militant prototype of the technocrat. His commitments to the rule of the educated and the expert wove together rejections of democratic radicalism, the party system, Caesarism, and libertarianism, and bore the marks of a hardened imperialism to boot. Running alongside this strain, but seldom crisscrossing it directly, was another: a radically pluralistic one. Indeed, so sharply expressed, and yet so rarely brought into contact, are the two lines of argument that it seems fair to say that Stephen's right hand did not know what his left hand was doing.

A useful entry point into this aspect of his thought is to note that Stephen was a proud follower of Bentham and self-described utilitarian (Warner 1993). Indeed, the Stephen-Mill contretemps was partly a battle for the soul of utilitarianism, with the younger jurist offering "a criticism of Mill's [scheme] from the older Utilitarian point of view" (Leslie Stephen, 1900, III, 244). Yet Stephen was far from merely aping Bentham, and he accepted utilitarianism only in a chastened form. Stephen believed himself a staunch utilitarian insofar as he agreed that "from the nature of the case some external standard must always be supplied by which moral rules may be tested; and happiness is the most significant and least misleading word that can be employed for that purpose" (2017, 159). Nevertheless, he parted ways with conventional utilitarians at a crucial point. He criticized the latter for not facing up to the dependency of even the most seemingly quantitative and objective verdict about "expediency" on an underlying "ideal of life" that was ineradicably contestable:

> there is a conflict between man and man, both as to the nature of happiness and as to the terms on which it is to be enjoyed. To base a universal moral system on the assumption that there is any one definite thing, or any one definite set of things, which can be denoted by the word "happiness" is to build on the sand. (2017, 160–1)

Like Hegel's criticism of Kant's moral theory for being formalistic and unable to give content to the ethical life (Habermas 1988), Stephen charged Mill and Bentham with failing to appreciate the extent to which happiness was merely a "vague and unsettled idea" (2017, 204). Appeal to it could help resolve disputes about which path to take where a (usually thin) consensus had taken root within a specific community—for example, if we want speedier criminal trials and *ceteris paribus* proposal *a* will deliver that better than proposal *b*, then we know to select *a*. But the flipside, to which orthodox Benthamites gave less attention, was that invoking utility or its synonyms was likely to prove impotent in precisely the most difficult cases, when "very different ideals of happiness" clashed with one another (Stephen 2017, 161, 98). Stephen was willing to be classed as a utilitarian *faute de mieux* because other foundational moral theories suffered worse defects.[10] His own utilitarianism, though, was constrained.

Stephen's discomfiture with more robust conceptions of utilitarianism and his sense that neither Bentham nor any other philosopher could provide a final ranking of the "comparative value of [contending] views of human life" broadened out naturally, in his mind, into a defense of diversity and conflict as constitutive elements of a free society (2017, 161). A plurality of views could be expected to arise organically (at least in societies with high literacy rates and the technologies of mass communication) wherever drastic efforts at suppression were not undertaken, because "antagonism" was an "essential" concomitant to "the vitality of mind and spirit," as one modern reader of Stephen has written (Edwards 1985). Or in Stephen's own words:

> There are and there must be struggles between creeds and political systems, just as there are struggles between different nations and classes if and in so far as their interests do not coincide. If Roman and Christian, Trinitarian and Arian, Catholic and Protestant, Church and State, both want the allegiance of mankind, they must fight for it.

[9] He was referring to Mill's *On Liberty* (1963–91, XVIII, 224); see Mantena (2010).

[10] Like Mill, Stephen accepted Bentham's dismissal of all contending moral principles as expressions of the private whims of their espousers (Bentham 1996, chap. 2).

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

> Struggles in different shapes are inseparable from life itself as long as men are interested in each other's proceedings. Between all classes of men there are and always will be real occasions of enmity and strife … even good men may be and often are compelled to treat each other as enemies either by the existence of conflicting interests which bring them into collision, or by their different ways of conceiving goodness. (2017, 75, 110, 159)

Such disagreements inevitably involved "argument, ridicule, the expression of contempt for cherished feelings, the exposure of cherished fallacies, chilled or wounded affection"; they caused "terrors" (Stephen 2017, 78). Yet like James Madison arguing that attempting to "destroy liberty" in order to eliminate "faction" was a "cure worse than the disease" (Cooke 1961, 61), Stephen rejected efforts to instill unity either via the state or heavy-handed social norms.[11] On the contrary, what was wanted was a culture of "fair play" by which everyone accepted that even those they found most hateful could make themselves heard and win political victories (2017, 77). So deep did his perception of the conflictual character of modern public life go that, though himself a proponent of religious/intellectual liberty, he castigated other advocates of toleration whom he judged to be peddling a false hope of harmony among divergent ideologies: he deplored the "excessive and irrational" picture of toleration that "aims at the complete suppression of these struggles, and so tends to produce a state of indifference and isolation" as a greater "evils" than the most confrontational pluralism could produce (2017, 110).

From this embrace of pluralism followed several important aspects of Stephen's outlook. One was his adoration of Hobbes (Colaiaco 1983). Perhaps surprisingly to many readers, Stephen understood Hobbes's philosophy as an aid to a proper understanding of liberalism; he assented to key Hobbesian tenets not despite, but because of, his endorsement of the "practice of modern Liberals" (2017, 75). Stephen was an acute reader of the beast of Malmesbury; in crucial respects he anticipated trends in Hobbes scholarship today (Abizadeh 2011; Tuck 1991). Most salient for our purposes, he interpreted Hobbes's natural condition as a device for showing not only the dangers that ideological conflict posed in the absence of the sovereign state, but also the naturalness and ineluctability of this conflict itself:

> When Hobbes taught that the state of nature is a state of war, he threw an unpopular truth into a shape liable to be misunderstood; but can anyone seriously doubt that war and conflict are inevitable … except at the price of evils which are even worse than war and conflict? – that is to say, at the price of absolute submission to all existing institutions, good or bad, or absolute want of resistance to all proposed changes, wise or foolish. Struggles there must and always will be, unless men stick like limpets or spin like weathercocks.
>
> We live in a state of war, not only between good & bad, but between different kinds of good. (2017, 59–60; also 1873b)

As is typical of Stephen's style,[12] he made his point in exaggerated fashion here. From its being "apparently part of the providential plan of life that men should differ endlessly," the inevitability of ideological violence or civil war did not follow; this was what political theory generally, and Hobbes above all, had shown (1859a, 734). The strong hand of the state was needed not to repress pluralism, but precisely because pluralism was ineradicable: "The great art of life lies not in avoiding these struggles, but in conducting them with as little injury as may be to the combatants" (Stephen 2017, 110). Without the state, our ideological quarrels would result in slaughter; the state's purpose was not to suppress these quarrels but to ensure that they played out via dialogue rather than bloody disorder. Stephen favored large measures of press liberalization relative to the law of his day (such as repeal of the offense of blasphemy) and he mocked those who would strain to "arrest discussion" (1862a, 324; Bury 1913). But support for such policies went hand in hand, to his mind, with the forceful assertion that the state must be understood to retain the rights to: crack down on outrage-inducing forms of expression in emergencies; set the contours of the informational infrastructure in which debate played out (which spaces were and were not available for public meetings, what the legal rights and duties of publishers were, etc.); stringently apply the law and uphold the state's monopoly on violence even when political or public-spirited motives were cited for acts of disorder; and (if need be) step in to curtail substate associations such as churches, clubs or leagues that might, if allowed to grow too powerful, "take [the State's] place" and "become embryo governments" (2017, 57–8; 1886).

In other words, Hobbes had, Stephen believed, elaborated the conditions under which an ineluctable conflictual pluralism could play out without leading to destruction and anarchy. Qua philosopher of law, Stephen claimed that as marriage served to "channel and regularize" rather than to exterminate sexuality, so criminal law served to channel and regularize vengeance rather than to eliminate it (Posner 2012). We might extend his analogy to say that the Hobbesian state existed not to eliminate what Mill called "the rough process of a struggle between combatants fighting under hostile banners," but to render it as safe and stable as possible (Mill 1963–91, XVIII, 254).

The liberal twist that Stephen gave Hobbes connected to three important pieces of his analysis. First, it fed into his assaults on the humanitarian utopianism (largely symbolized for him by the aforementioned Auguste Comte's "Religion of Humanity") common

[11] Stephen, again belying reactionary or theocratic interpretations, admired the *Federalist* (Stephen 1864a).

[12] The novelist George Eliot rebuked Stephen for "a 'rimbombo' of rhetoric (like the singing into big jars to make demon-music in an opera)"; see Eliot (1998, 419).

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

in nineteenth-century philosophy (Stephen 1858). Many authors in this vein foretold that the coercive state would vanish and concord reign within society. To Stephen, precisely because there would come no end to the clash of "ideas," "theories," and "modes of life," the state would always be necessary to keep this clash contained to the discursive realm, to constrain (as a later commentator summed up lessons from Stephen) the losers of a given political tussle to respect the "rules of the game" and steer their energies away from vengeance toward the next "fairly conducted" vote or argument (Haynes 1916, 128; Stephen 1869). Second, it motivated an overlooked part of Stephen's critique of Mill. While the author of *On Liberty* is famous for singing paeans to diversity, Stephen reproached him for being a half-hearted end-of-history theorist: "the nervous fear that a time may possibly come when there will be nothing left to argue about appears to me about as reasonable as the 'thought of the exhaustibility of musical combinations of the seven tones and semitones which make up the octave,' by which Mr. Mill … was 'seriously tormented' at one time of his life" (2017, 55).[13] "Moral controversies," confrontations over "interests," and "endless differences of opinion … on the nature of good and evil … the character of God, and the ideal of human life" would last as long as society itself (Stephen 1867b).[14] Third, it drove Stephen's dissatisfaction with Mill's jeremiads against "social intolerance" (2017, 64). Stephen himself expressed concern about gossip, the invasion of unpopular individuals' private lives, and the "ignoble littleness of character" that led to "noiseless excommunication" of one's "neighbours" (Stephen 1859c; 1862b, 81). But he thought *On Liberty* had pushed too far. Where differences arose on "the greatest subjects of thought and feeling," it was natural that one side should "reproach," should "condemn and blame," the other (Stephen 1862b, 76; 2017, 65). Yet Mill, as Fitzjames read him, required of us "absolute neutrality" where "enmity" and "disapproval" were often appropriate, for if liberty meant anything it surely meant being able to act on even our disapprobatory sentiments (Stephen 2017, 65–6). When disputes that went "to the very core and root of life" occurred, it was stifling to enjoin the opponents to celebrate or "love one another." Instead, we ought to embrace quite a lot of ill feeling so long as the state kept the contenders "within bounds" and enforced common rules of "justice" on all (Stephen 2017, 65, 156).

From this deep pluralism emerged another crucial tenet: his rejection of the goal of the moral-religious neutrality of the state (Stephen 2017, 53–7). Because there were so many and such adverse outlooks, it was impossible that policy could be "really neutral" between them (Stephen 2017, 53). Even textbook liberal commitments like toleration, privacy, and equality before the law were not neutral but belonged to one "moral and social standard" among many, and when implemented they necessarily forced other "principles" to "give way" (Stephen 1875; 2017, 40). To take an example of which he was fond: adopting the "voluntary system" of religion and thereby removing the formal connection between state and church was to take no less a "definite" line on the relationship between religion and politics than maintaining a state church (Stephen 1873c; also 1867a). Moreover, and typically for him, this lesson was graphically illustrated by the imperial regime in India, where he believed that, despite trying to avoid "proselytism" and to limit "direct interference" with native customs, the British could not but effect "essentially and substantially a displacement of Hindu in favour of European morality" (Stephen 1875, 195). The central upshot of his radical pluralism, he believed, was that a state impartial between conceptions of the good was impossible; what marked the liberal state, from this point of view, was not that it governed in a neutral manner but that, rather than imposing unity of belief, it endeavored to contain contestation within a pacific public sphere.

Now, this recognition of non-neutrality did not mean that states should not cultivate consensus when they could or preserve it when it came about. Indeed, societies could not survive if centrifugal forces were not counterbalanced with centripetal ones; and there was no skirting the fact that fundamental goods like enforcing the law required broad public buy-in (Stephen 2017, 98–104).[15] Yet such overlapping consensuses did not disprove the basic pluralistic worldview, and they all had something more or less frail about them. Social cohesion was an achievement of statesmanship, not a gift of nature. Stephen's sense of both the importance and fragility of cohesion amidst pluralism made him especially appreciative of institutions that had a capacity for what we might call *expansive commonality*. To give one salient example: he was a strong supporter of the Anglican establishment against those who preferred to sever church from state and follow the American model. Stephen's support, however, was conditional upon the Church of England embracing the full spectrum of Christian opinion within it and permitting free discussion among its clergy (1866d). Without this degree of inclusion and "liberalism," the Church would be not a "national" but a "sectarian" institution, and it would forfeit its claims to public subsidies and privileges (Stephen 1864d).

Finally, it is worth noting that for Stephen the antagonism in society also reached, so to speak, inside the human being. Stephen's picture of the core ethical difficulty confronting modern individuals was to pull off a kind of tightrope walk: (a) to maintain the courage

[13] Stephen was quoting from Mill's *Autobiography*; there are passages to similar effect in *On Liberty* about needing to stimulate devil's advocacy artificially in an eventual future where a unanimously held truth prevailed.

[14] This conception that politics would remain permanently conflictual did not entail philosophical skepticism in his eyes; Stephen often espoused toleration as conducive to "the attainment of truth" (1865d).

[15] Consensus theorists and legal moralists understandably picked up on these aspects of Stephen, although they fundamentally misunderstood them (Devlin 2010).

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

of one's convictions while (b) recognizing the plurality of "objects the attainment of which is desirable for men" and the impossibility of "certainty" on the great questions (Stephen 1864c). It was imperative that we adhere to our beliefs rather than sliding into a tepid indifference, but also to accept that those beliefs rested only on "probability" (Stephen 2017, 118; also 1868a). "Complete harmony is probably unattainable even by individuals"; "we are forced to live," he wrote in Evangelical tone that remained with him even after drifting from his faith, in "a dark night" of "uncertainty and ignorance," and our "trial" was to make a "frank admission" of the limits of available evidence and yet still live according to our convictions (Stephen 1873a, 1874b). Inescapable conflicts played out not just between us but within us.

CONCLUSION: STEPHEN AND THE CHALLENGES OF MODERN LIBERALISM

Stephen, we can now see, articulated visions of both a radically pluralistic and an unapologetically technocratic political order. Strikingly, though, the twain never really met in his oeuvre. Beyond his professional métier of law, Stephen was a controversialist rather than a systematizer, and his technocratic elitism or conflictual pluralism were brandished as needed against perceived threats to "true liberalism" as they arose. As to how exactly the two coalesce, he does little more than gesture.

Given this dualism, it is natural that Stephen should have been interpreted in ways congruent with each side of his thought. First, he has been taken to typify a high-water mark of antidemocratic elitism (Anonymous 1873; Cocks 2004, 85; Wright 2014, 61). He is thought not just to have been unimpressed with the extension of the suffrage but also to have championed a far-reaching marginalization and depoliticization of the masses. Where the aspiration of many mid-nineteenth-century reformers was to reconcile "brains and numbers" (Kent 1978), Stephen is supposed to have held that brains should be allowed to operate the levers of the state in the silence of the populace over which they ruled. Second, there has, if less robustly, been a line that, taking up Stephen's pluralism, read him in an agonistic manner. Oliver Wendell Holmes, the American Supreme Court Justice and legal thinker, was close to the Stephen brothers and was influenced by Fitzjames's views of the ultimacy of conflict and coercion in politics; echoes of the English judge's ideas about fundamental societal antagonisms can be heard in some of the Justice's most celebrated opinions.[16] The pragmatist philosopher William James concluded his famous attack on the claims of "science" to dictate beliefs of social and religious import with a stirring quotation from Fitzjames about the moral disposition fit for navigating an age of ineradicable uncertainty (James 1898, 31).[17] The pragmatists who remade American philosophy and social science at the turn of the twentieth century were steeped in the writings of Stephen and his circles, and they seem to have grasped Stephen in a proto or quasi-existentialist manner (Menand 2002). This existentialist ring causes Stephen's writing to resemble later intellectual currents more than his fellow mid-Victorians'. For instance, Weber's famous dictum of political existentialism—that it was a "fundamental fact … that as long as life is left to itself and is understood in its own terms, it knows only that the conflict between gods is never-ending. Or, in nonfigurative language, life is about the incompatibility of ultimate possible attitudes and hence the inability ever to resolve the conflicts between them"—could be slotted seamlessly into the Stephen corpus (Weber 2004, 27).[18]

What is of note with regard to these interpretations is that, if either of them had captured the whole truth about Stephen—if it were the case that Stephen had *only* written apologias for the coercive rule of experts or *only* waxed poetic about the endless conflict between values—then he could never have been considered a liberal. If he had solely espoused the first set of views we analyzed, his outlook would have qualified as a kind of authoritarianism of scientists and experts; if solely the second, he would have offered a nineteenth-century preview of those forms of antifoundationalist agonism that set themselves against liberalism today. Stephen, by never giving himself wholly over to one impulse or the other, remained a liberal, but by giving powerful expression both to his technocratic and his pluralistic convictions without reconciling them, he shows us where the limits of liberalism lie.

For one way of thinking about liberalism, an investigation of Stephen prompts us to see, is that it is a family of theories that attempt to do justice to both the imperatives of technocracy and pluralism, and hence a fundamental task of a liberal theory is, however implicitly, to demonstrate how the two can be balanced, reconciled, or arranged in a mutually supportive manner. Much of the credibility of a given liberal theory lies in how convincingly it portrays the coexistence of the two, and much of the distinctive character of a specific theorization will derive from the respective weight it gives to these two elements.[19] A burden of liberal theories is to show how both conflict/contestation and

[16] On Holmes's agonism, e.g., Mendenhall (2017). On Stephen's relationship with Holmes, e.g., Burrow (1992) and Howe (1963).

[17] The passage was from *Liberty, Equality, Fraternity* (Stephen 2017, 193–4). He quotes a lengthy passage that includes such memorable phrases as, "In all important transactions of life we have to take a leap in the dark…. If we decide to leave the riddles unanswered, that is a choice; if we waver in our answer, that, too, is a choice: but whatever choice we make, we make it at our peril…. What must we do? 'Be strong and of a good courage.' Act for the best, hope for the best, and take what comes."

[18] The resemblance is unsurprising when we recall how steeped Weber was in the details of Victorian political-intellectual development. A few scholars have noted affinities between Stephen and Weber (Gottfried 1996; Kent 1969).

[19] One sees this two-sidedness not only in liberals but in their critics. Carl Schmitt, for example, criticized liberalism for being both technocratic and unable to instantiate national unity (e.g., McCormick 1997).

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

expert-led, "objective" governance are vindicated, but also tempered by one another. Liberals, we might say, paint within the lines that Stephen drew.

To see this, let us look at two other prominent Victorian liberals who can be grasped as seeking to harmonize the claims of technocracy and pluralism. A first useful point of comparison is Albert Venn Dicey. As mentioned earlier, Dicey, the leading constitutionalist of his era, was Stephen's cousin. He was also, like Stephen, both a proponent of systematic legal reform and a self-conscious adherent to an older, "truer" liberalism against socialistic and nationalist trends (above all, the movement for Irish Home Rule) which discomfited him later in the century. Dicey himself undertook to outline a system that could balance technocratic competence with the preservation of mass political contestation. Interestingly, for Dicey the lynchpin of this system was the referendum; he is, although this has seldom been recognized, the first major Anglophone thinker to have placed the referendum at the heart of his political theory (Weill 2003). The lynchpin of Dicey's vision of political reform was the implementation of the referendum for bills that touched "fundamental" or "constitutional" matters after they had received the assent of parliament but before they could become law. Dicey expected a great array of benefits from this proposal, but a central one was that it would grant both contestation and expert administration their due. Instantiating the referendum was meant to guarantee, on the one hand, that an unrepresentative elite could never alter the central pillars of British politics except with ratification from the whole electorate after the open airing of views from all segments of the public. On the other hand, he believed that, secure in the knowledge that the entire electorate would have a chance to weigh in on constitutional reforms, citizens would be willing to leave administrative matters in the hands of competent statesmen without reference to ideological or partisan allegiance; in other words, the normal demands of governance could be conducted in a properly "businesslike" manner if, and only if, conflict between the contending interests and ideas of the demos and majority ratification were assured on matters that went to the core of political life and national identity (Dicey 1890a; 1890b). Stephen died too soon to engage with his cousin's key writings on this subject; but it is unlikely that he would have been satisfied by Dicey's advocacy of the referendum. Wearing his technocratic hat, it would have seemed insufficiently elitist; wearing his pluralistic hat, it would have appeared to give too short shrift to the depth to which deep value commitments were implicated even by policies that did not rise to the level of "fundamental."

J. S. Mill affords a second apt comparison. It has been recognized that Mill attempted to strike a balance, if not exactly between technocracy and pluralism, then between competence/intelligence and participation/inclusion (Miller 2003; Thompson 1976). Some aspects of Mill's theory of government prefigure a Weberian division between rationalistic administration by experts and a political arena of contestability (Mill 1963–91, XIX, chaps. 5–6, 14–15). Yet in the end, Mill's sensibility on these questions was closer to his younger compatriot's than the later German's.[20] More than Stephen, Mill sought to theorize concretely a system that would satisfy as far as possible his twin desiderata and strike a compromise between them when they collided. For Mill too, however, the frontier between the two domains was difficult to delineate. To take only one example: the House of Commons was to be made *both* a place of greater enlightenment, expertise, and intellectual probity (through weighting the votes of the educated) *and* more inclusive of diverse perspectives and interest (through the single-transferable vote) (Conti 2021a). The reconciliation of these two hinged on the expectation that the "minority" of MPs who could divine "reason, justice, and the good of the whole," having heard all of the "sectional" appeals to the "interests" that "divided" the different factions in the assembly, would "turn the scale" in favor of the correct policies (Mill 1963–1991, XIX, 447). In our age of tight party discipline, Mill's thesis is unlikely to appear the final word.

While Mill was more fecund in suggestions for institutional reform, his theory had something of the same indistinct shape as Stephen's. Nonetheless, in Stephen's work the dilemmas posed by liberalism's service to these two masters appear less tractable. Mill was never as elitist and exclusivist in developing the technocratic strain of his ideas; his apprehension that even a well-trained, efficacious bureaucracy was sure to degenerate into "pedantocracy," as well as his Tocquevillian dread of administrative centralization, kept him from propounding sentiments such as Stephen's (Mill 1963–91, XVIII, 308; XIX, 439–40). But, for all of his laudations of "Antagonism" (1963–91, XIX, 458), he was also not as radically value-pluralistic as Stephen. Perhaps more striking, while Mill shares some important premises with trends in contemporary left-liberal theory such as "standpoint epistemology" or the "politics of presence," he did not perceive the depth of the challenge that such movements could present to his notion of enlightened governance. For he explained the urgency of bringing hitherto marginalized groups like "the working classes" into the parliamentary fold fundamentally as a matter of guaranteeing that relevant data, testimony, and reasons were not overlooked (Mill 1963–91, XIX, 405). The verdict on the weight to place on this information and on the appropriate courses of action to follow was to be rendered by an "*élite*" which the country recognized as such and whose standing it did not find "invidious" (Mill 1963–91, XIX, 456, 474). This vision sounds almost quaint in our era of intense polarization, cultural fragmentation, calls for "identitarian deference," and radical critiques (running the gamut from populist to postmodern) of social-scientific claims to objectivity. To the difficulties that come with diversity and societal disharmony in the twenty-first century, Stephen's thought is more attuned than that of the "patron saint of liberalism."

[20] Stephen himself highlighted similarities in their views about the techno-administrative problems that classical parliamentarism faced (1873d, 10–1).

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

Figures such as Dicey and Mill attempted to reconcile commitments that Stephen left distinct. In one sense they can clearly be said to have had more "success" as liberal theorists than did Stephen. But revisiting them with Stephen in mind can help us to observe just how much friction there is between these sets of values. The vehemence with which he expressed both pluralistic and technocratic convictions helps point us to the boundaries of liberalism, to the space within which it operates, for whatever else a theory that lacks one or the other of these elements might be, it would struggle to qualify as liberal. Likewise, Stephen's indifference to harmonizing them keeps us alert, in a way that reading more constructive liberal philosophers does not, to the fact that there is no permanent resolution to the conflict between these ideals. After all, despite their aspirations to coherence and system, neither Dicey nor Mill in fact described the liberal political orders in which we now live, and no liberal democracy looks likely to fall into one of their templates in the coming years. In a modern liberal society, it seems, we can no more deny the force of either ideal than we can follow either one taken alone to its extreme. Hence there is a certain instability built into the heart of liberal theories and liberal states. The resistance to systematization that keeps Stephen from the top flight as a normative theorist elevates him as a diagnostician of the "crises" into which liberalism appears destined periodically to relapse. Stephen points us to the lesson which we are perhaps now living: that the accord between the rationalistic-administrative and contestatory-pluralist imperatives of liberal legitimacy is always liable to fray, for each possesses a powerful logic of its own. The dualism at the center of Stephen's thought qualifies, if anything does, among what Pierre Rosanvallon calls the "contestations and tensions always being reborn" in modern politics (2000, 405), and the fate of liberal regimes depends, as it always has depended, on the perception that they hold these discrete imperatives, and the norms and institutions following therefrom, in productive, rather than disintegrating, tension.

ACKNOWLEDGMENTS

The author would like to thank Joseph Puchner, Will Selinger, Samuel Zeitlin, the editors at *APSR*, and the anonymous reviewers for their very perceptive comments.

CONFLICT OF INTEREST

The author declares no ethical issues or conflicts of interest in this research.

ETHICAL STANDARDS

The author affirms that this research did not involve human subjects.

REFERENCES

Abizadeh, Arash. 2011. "Hobbes on the Causes of War: A Disagreement Theory." *American Political Science Review* 105(2): 298–315.

Annan, Noel. 1955. "The Intellectual Aristocracy." In *Studies in Social History: A Tribute to* G. M. Trevelyan, ed. John H. Plumb, 243–87. London: Longmans.

Anonymous. 1873. "Liberty, Equality, Fraternity." *British Quarterly Review* 58: 256–58.

Bentham, Jeremy. 1996. *An Introduction to the Principles of Morals and Legislation*, ed. J. H. Burns and H. L. A. Hart. Oxford: Oxford University Press.

Biagini, Eugenio. 1992. *Liberty, Retrenchment, and Reform: Popular Liberalism in the Age of Gladstone, 1860–1880*. Cambridge: Cambridge University Press.

Bickerton, Christopher, and Carlo Invernizzi Accetti. 2017. "Populism and Technocracy: Opposites or Complements?" *Critical Review of International Social and Political Philosophy* 20(2): 186–206.

Bourke, Richard. 2018. "What is Conservatism? History, Ideology, Party." *European Journal of Political Theory* 17(4): 449–75.

Burrow, J. W. 1992. "Holmes in His Intellectual Milieu." In *The Legacy of Oliver Wendell Holmes, Jr.*, ed. Robert Gordon, 17–30. Redwood City, CA: Stanford University Press.

Bury, John B. 1913. *A History of Freedom of Thought*. London: Thornton Butterworth.

Carlyle, Thomas. 1904. *New Letters of Thomas Carlyle*, 2 vols, ed. Alexander Carlyle. London: J. Lane.

Cazzola, Matilde. 2019. "Un lume indiano sui problemi europei: James Fitzjames Stephen e il governo del Reform Act." *Storia del pensiero politico* 8: 89–108.

Cocks, Raymond. 2004. *Sir Henry Maine: A Study in Victorian Jurisprudence*. Cambridge: Cambridge University Press.

Colaiaco, James. 1983. *James Fitzjames Stephen and the Crisis of Victorian Thought*. New York: St. Martin's Press.

Comte, Auguste. 1865. *A General View of Positivism*, trans. J. H. Bridges. London: Trbner.

Conti, Gregory. 2016. "James Fitzjames Stephen, John Stuart Mill, and the Victorian Theory of Toleration." *History of European Ideas* 42(3): 364–98.

Conti, Gregory. 2021a. "Inegalitarian Inclusivity: A Reading of J.S. Mill's Mature Theory of Representation and Electoral Institutions in Context." *History of Political Thought* 42 (1): 98–130.

Conti, Gregory. 2021b. "James Fitzjames Stephen and the Landscape of Victorian Political Thought." *Modern Intellectual History* 18 (1): 261–74.

Conti, Gregory. Forthcoming. "James Ftizjames Stephen's Other Enemies: Catholicism and Positivism in *Liberty*, *Equality*, *Fraternity* and Beyond." Global Intellectual History.

Cooke, Jacob, ed. 1961. *The Federalist*. Middletown, CT: Wesleyan University Press.

Deslauriers, Théophile. N.d. "James Fitzjames Stephen and Henry Maine on Status and Contract in Britain and Its Empire." Princeton University. Working Paper.

Devlin, Patrick. 2010. *The Enforcement of Morals*. Indianapolis, IN: Liberty Fund.

Dicey, Albert Venn. 1890a. "Democracy in Switzerland." *Edinburgh Review* 171: 113–45.

Dicey, Albert Venn. 1890b. "Ought the Referendum to Be Introduced into England?" *Contemporary Review* 57: 489–511.

Dicey, Albert Venn. 1914. *Lectures on the Relation between Law and Public Opinion in England*. London: The MacMillan.

Edwards, David. 1985. "Toleration and the English Blasphemy Law." In *Aspects of Toleration*, eds. John Horton and Susan Mendus, 75–98. London: Methuen.

Eliot, George. 1998. *Selections from George Eliot's Letters*, ed. Gordon Haight. New Haven, CT: Yale University Press.

Gauchet, Marcel. 2007. *L'avènement de la démocratie, I: La révolution moderne*. Paris: Gallimard.

Gottfried, Paul. 1996. "Liberalism and Democracy." *Journal of Libertarian Studies* 12 (2): 233–55.

Guérard, Albert. 1969. *Napoleon III: A Great Life in Brief*. New York: Palala Press.

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

Habermas, Jürgen. 1988. "Morality and Ethical Life: Does Hegel's Critique of Kant Apply to Discourse Ethics." *Northwestern University Law Review* 83(1&2): 38–53.
Hajdenko-Marshall, Catherine. 2012. "Sir James Fitzjames Stephen (1829–1894): un intellectuel sceptique, critique des idées libérales de son temps." *Cahiers Victoriens et Édouardiens* 75: 81–92.
Harrison, Frederic. 1873a. Letters to John Morley, 1873 folio 1. London: Harrison Papers, British Library of Political and Economic Science, London School of Economics and Political Science.
Harrison, Frederic. 1873b. "The Religion of Inhumanity." *Fortnightly Review* 13: 677–99.
Haynes, E. S. P. 1916. *The Decline of Liberty in England*. London: Richards.
Hirschman, Albert. 1991. *The Rhetoric of Reaction*. Cambridge, MA: Harvard University Press.
Howe, Mark. 1963. *Justice Oliver Wendell Holmes: The Proving Years*. Cambridge, MA: Harvard University Press.
James, William. 1898. *The Will to Believe and Other Essays*. New York: Longmans, Green & Co.
Jones, Emily. 2017. *Edmund Burke and the Invention of Modern Conservatism, 1830–1914*. Oxford: Oxford University Press.
Kekes, John. 1998. *A Case for Conservatism*. Ithaca, NY: Cornell University Press.
Kent, Christopher. 1969. "Higher Journalism and the Mid-Victorian Clerisy." *Victorian Studies* 13(2): 181–98.
Kent, Christopher. 1978. *Brains and Numbers*. Toronto: University of Toronto Press.
Kirk, Russell. 1960. *The Conservative Mind: From Burke to Eliot*. Chicago: Henry Regnery.
Lecce, Steven. 2008. *Against Perfectionism: Defending Liberal Neutrality*. Toronto: University of Toronto Press.
Lippincott, Benjamin. 1931. "James Fitzjames Stephen: Critic of Democracy." *Economica* 33: 296–307.
Lippincott, Benjamin. 1938. *Victorian Critics of Democracy*. Minneapolis: University of Minnesota Press.
Mantena, Karuna. 2010. *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism*. Princeton, NJ: Princeton University Press.
McCormick, John. 1997. *Carl Schmitt's Critique of Liberalism*. Cambridge: Cambridge University Press.
Menand, Louis. 2002. *The Metaphysical Club*. New York: Macmillan.
Mendenhall, Allen. 2017. *Oliver Wendell Holmes Jr.: Pragmatism, and the Jurisprudence of Agon*. Lewisburg, PA: Bucknell University Press.
Mill, John Stuart. 1963–91. *The Collected Works of John Stuart Mill*, 33 vols. Toronto: University of Toronto Press.
Miller, Joseph J. 2003. "J.S. Mill on Plural Voting, Competence and Participation." *History of Political Thought* 24(4): 647–67.
Morley, John. 1873a. Letter to Frederic Harrison, 22 April 1873. London: Harrison Papers, British Library of Political and Economic Science, London School of Economics and Political Science.
Morley, John. 1873b. "Mr. Mill's Doctrine of Liberty." *Fortnightly Review* 14: 234–56.
Müller, Jan-Werner. 2009. "The Triumph of What (If Anything)? Rethinking Political Ideologies and Political Institutions in Twentieth-century Europe." *Journal of Political Ideologies*, 14(2): 211–26.
Muller, Jerry. 1997. *Conservatism: An Anthology of Social and Political Thought*. Princeton, NJ: Princeton University Press.
Norton, Charles Eliot. 1913. *Letters of Charles Eliot Norton*, 2 vols. Boston: Houghton Mifflin.
O'Grady, Jean. 1987. "Mill and Fitzjames Stephen: Personal Notes." *Mill Newsletter* 22: 2–9.
Parry, J. P. 1986. *Democracy and Religion: Gladstone and the Liberal Party, 1867-1875*. Cambridge: Cambridge University Press.
Parry, J. P. 2001. "The Impact of Napoleon III on British Politics, 1851–1880." *Transactions of the Royal Historical Society* 11: 147–75.
Posner, Richard. 1991. "Foreword." In *Liberty, Equality, Fraternity*, by James Fitzjames Stephen. Chicago: University of Chicago Press.
Posner, Richard. 2012. "The Romance of Force: James Fitzjames Stephen on Criminal Law." *Ohio State Journal of Criminal Law* 10: 263–75.
Pyle, Andrew. 1994. "Introduction." In *Liberty: Contemporary Responses to John Stuart Mill*, ed. Andrew Pyle, vii–xxi. Bristol: Thoemmes Press.
Roach, John. 1953. *Sir James Fitzjames Stephen: A Study of His Life and Thought*. PhD diss. Cambridge University.
Roach, John. 1957. "Liberalism and the Victorian Intelligentsia." *Cambridge Historical Journal* 13(1): 58–81.
Rodensky, Lisa. 2013. "Introduction." In *The Story of Nuncomar and the Impeachment of Sir Elijah Impey*, by James Fitzjames Stephen, xv–xxxvi. Oxford: Oxford University Press.
Rosanvallon, Pierre. 2000. *La démocratie inachevée*. Paris: Gallimard.
Rosanvallon, Pierre. 2013. *Democratic Legitimacy: Impartiality, Reflexivity, Proximity*. Princeton, NJ: Princeton University Press.
Rosenblatt, Helena. 2019. *The Lost History of Political Liberalism: From Ancient Rome to the Twenty-First Century.* Princeton, NJ: Princeton University Press.
Saint-Simon, Henri de. 1975. *Selected Writings on Science, Industry, and Social Organisation*, ed. Keith Taylor. New York: Taylor & Francis.
Schneider, Thomas. 2007. "J. S. Mill and Fitzjames Stephen on the American Civil War." *History of Political Thought* 28(2): 290–304.
Schneider, Thomas. 2015. "Introduction." In *On Society, Religion, and Government*, by James Fitzjames Stephen, xvii–xxviii. Oxford: Oxford University Press.
Schumpeter, Joseph. 1942. *Capitalism, Socialism, and Democracy*. New York: Harper.
Selinger, William, and Gregory Conti. 2020. "The Lost History of *Political* Liberalism." *History of European Ideas* 46(3): 341–54.
Simon, Walter M. 1963. *European Positivism in the Nineteenth Century*. Ithaca, NY: Cornell University Press.
Skinner, Quentin. 1998. *Liberty before Liberalism*. Cambridge: Cambridge University Press.
Smith, K. J. M. 1989. *James Fitzjames Stephen: Portrait of a Victorian Rationalist*. Cambridge: Cambridge University Press.
Smith, K. J. M. 2012. "Stephen, Sir James Fitzjames, First Baronet." In *Oxford Dictionary of National Biography*. https://doi.org/10.1093/ref:odnb/26375.
Smith, K. J. M. 2014. "Introduction and Commentary." In *Selected Writings of James Fitzjames Stephen: A General View of the Criminal Law of England*, ed. K. J. M Smith, 1–47. Oxford: Oxford University Press.
Stapleton, Julia. 1997. "Introduction." In *Liberalism, Democracy, and the State in Britain*, ed. Julia Stapleton, 7–39. Bristol: Thoemmes Press.
Stapleton, Julia. 1998. "James Fitzjames Stephen: Liberalism, Patriotism, and English Liberty." *Victorian Studies* 41(2): 243–63.
Stapleton, Julia. 2017. "Introduction." In *Liberty, Equality, Fraternity*, by James Fitzjames Stephen, xix–xxxviii. Oxford: Oxford University Press.
Stephen, James Fitzjames. 1857a. "Light Literature and the *Saturday Review*." *Saturday Review* 4: 34–5.
Stephen, James Fitzjames. 1857b. "Mr. Dickens as a Politician." *Saturday Review* 3: 8–9.
Stephen, James Fitzjames. 1858. "Positive Religion." *Saturday Review* 5: 563–65.
Stephen, James Fitzjames. 1859a. "Doing Good." *Saturday Review* 8: 733–34.
Stephen, James Fitzjames. 1859b. "M. Simon on Liberty." *Saturday Review* 7: 684–6.
Stephen, James Fitzjames. 1859c. "Mr. Mill on Political Liberty." *Saturday Review* 7: 186–87.
Stephen, James Fitzjames. 1860. "Christianity in India." *Saturday Review* 9: 672–74.
Stephen, James Fitzjames. 1862a. *Defence of the Rev. Rowland Williams D. D., in the Arches' Court of Canterbury*. London: Smith, Elder & Co.
Stephen, James Fitzjames. 1862b. "Liberalism." *Cornhill* 5: 70–83.
Stephen, James Fitzjames. 1863a. "Anti-respectability." *Cornhill* 8: 282–94.
Stephen, James Fitzjames. 1863b. "Men and Brutes." *Saturday Review* 16: 606–07.
Stephen, James Fitzjames. 1864a. "The Federalist." *Saturday Review* 17: 384–86.

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press

Stephen, James Fitzjames. 1864b. "The 'Isms.'" *Saturday Review* 17: 680–81.
Stephen, James Fitzjames. 1864c. "Kaye's History of the Indian Mutiny." *Fraser's Magazine* 70: 757–74.
Stephen, James Fitzjames. 1864d. "The Privy Council and the Church of England." *Fraser's Magazine* 69: 521–37.
Stephen, James Fitzjames. 1865a. "De Tocqueville's Historical Fragments." *Saturday Review* 20: 116–18.
Stephen, James Fitzjames. 1865b. "English Ultramontanism [I–II]." *Fraser's Magazine* 71/72: 671–87, 1–35.
Stephen, James Fitzjames. 1865c. "Merivale's Sermons on the Conversion of the Roman Empire." *Fraser's Magazine* 71: 363–82.
Stephen, James Fitzjames. 1865d. "Senior's Historical and Philosophical Essays." *Saturday Review* 19: 479–81.
Stephen, James Fitzjames. 1865e. "Tom Paine." *Saturday Review* 20: 551–53.
Stephen, James Fitzjames. 1866a. "Ecce Homo." *Saturday Review* 33/34: 746–65, 29–52.
Stephen, James Fitzjames. 1866b. "The Price of Party Government." *Pall Mall Gazette*, July 11, 105–6.
Stephen, James Fitzjames. 1866c. "Two Forms of Liberalism." *Pall Mall Gazette*, October 20, 1217–8.
Stephen, James Fitzjames. 1866d. "Conscience and the Church Rates." *Pall Mall Gazette*, May 10, 1505–6.
Stephen, James Fitzjames. 1867a. "England." *The Nation* 18: 54–5.
Stephen, James Fitzjames. 1867b. "Moral Controversies." *Saturday Review* 23: 227–29.
Stephen, James Fitzjames. 1868a. "The Archbishop of York on the Limits of Philosophical Inquiry." *Saturday Review* 8: 11–2.
Stephen, James Fitzjames. 1868b. "The House of Commons as a Debating Club, *Pall Mall Gazette*, June 11.
Stephen, James Fitzjames. 1869. "The Present State of Religious Controversy." *Fraser's Magazine* 80: 537–74.
Stephen, James Fitzjames. 1870. "The Problem of Positivism." *Pall Mall Gazette*, January 5, 9.
Stephen, James Fitzjames. 1873a. Letter to Emily Cunningham, 30 January 1873. Cambridge: Stephen Papers, Cambridge University Library.
Stephen, James Fitzjames. 1873b. Letter to Emily Cunningham, 7 February 1873. Cambridge: Stephen Papers, Cambridge University Library.
Stephen, James Fitzjames. 1873c. "Mr. O'Keefe on Ultramontanism." *Pall Mall Gazette*, April 29, 1577–8.
Stephen, James Fitzjames. 1873d. "Parliamentary Government." *Contemporary Review* 23: 1–19, 165–81.
Stephen, James Fitzjames. 1874a. "The Laws of England as to the Expression of Religious Opinion." *Contemporary Review* 25: 446–75.
Stephen, James Fitzjames. 1874b. Letter to Emily Cunningham, 3 October 1874. Cambridge: Stephen Papers, Cambridge University Library.
Stephen, James Fitzjames. 1875. "Legislation under Lord Mayo." In *A Life of the Earl of Mayo, Fourth Viceroy of India*, 2 vols, by William W. Hunter, 143–226. London: Smith, Elder & Co.
Stephen, James Fitzjames. 1879. Letter to Lord Lytton, 1 October 1879. Cambridge: Stephen Papers, Cambridge University Library.
Stephen, James Fitzjames. 1882a. Letter to Lady Grant Duff, 20 February 1882. Cambridge: Stephen Papers, Cambridge University Library.
Stephen, James Fitzjames. 1882b. Letter to Lady Grant Duff, 13 July 1882. Cambridge: Stephen Papers, Cambridge University Library.
Stephen, James Fitzjames. 1883a. "The Foundations of the Government of India." *The Nineteenth Century* 14: 541–68.
Stephen, James Fitzjames. 1883b. *History of the Criminal Law of England*, 3 vols. London: MacMillan.
Stephen, James Fitzjames. 1886. "On the Suppression of Boycotting." *Nineteenth Century* 20: 765–84.
Stephen, James Fitzjames. 2017. *Liberty, Equality, Fraternity*. Oxford: Oxford University Press.
Stephen, Leslie. 1895. *The Life of James Fitzjames Stephen*. London: Smith, Elder & Co.
Stephen, Leslie. 1900. *The English Utilitarians*, 3 vols. London: Duckworth & Co.
Stokes, Eric. 1959. *The English Utilitarians and India*. Oxford: Oxford University Press.
Thompson, David. 1951. *England in the Nineteenth Century, 1815–1914*. London: Pelican Books.
Thompson, Dennis. 1976. *John Stuart Mill and Representative Government*. Princeton, NJ: Princeton University Press.
Tolley, Christopher. 2017. "Editorial Preface." In *The Life of James Fitzjames Stephen*, ed. Leslie Stephen, xli–xliv. Oxford: Oxford University Press.
Tuck, Richard. 1989. *Hobbes*. Oxford: Oxford University Press.
Tuck, Richard. 1991. "Introduction." In *Leviathan: Revised student edition*, by Thomas Hobbes, ed. Richard Tuck, ix–xlv. Cambridge: Cambridge University Press.
Vermeule, Adrian. 2015. "Publius as an Exportable Good." *The New Rambler Review*, December 3, 2015. https://newramblerreview.com/book-reviews/law/publius-as-an-exportable-good.
Vermeule, Adrian. 2021. "Rules, Commands and Principles in the Administrative State." *Yale Law Journal Forum*, January 6, 2021. https://www.yalelawjournal.org/pdf/VermeuleEssay_pq1o3t31.pdf.
Vernon, Richard. 2007. *The Career of Toleration: John Locke, Jonas Proast, and After*. Montreal: McGill-Queen's University Press.
Von Arx, Jeffrey P. 1985. *Progress and Pessimism: Religion, Politics, and History in Late Nineteenth Century Britain*. Cambridge, MA: Harvard University Press.
Warner, Stuart. 1993. "Foreword." In *James Fitzjames Stephen: Liberty, Equality, Fraternity*, ed. Stuart D. Warner, ix–xxiv. Indianapolis, IN: Liberty Fund.
Weber, Max. 2004. *The Vocation Lectures*, eds. David Owen and Tracy Strong. Indianapolis, IN: Hackett.
Weill, Rivka. 2003. "Dicey Was Not Diceyan." *Cambridge Law Journal*: 62 (2): 474–93.
Wright, D. G. 2014. *Democracy and Reform, 1815-1885*. London: Routledge.

https://doi.org/10.1017/S0003055421000411 Published online by Cambridge University Press