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AV Dicey on English Imperialism

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I. Introduction

This chapter asks how AV Dicey accounted for one of the nineteenth century's most globally consequential revolutions in British political opinion: the growth of pro-imperial sentiment. Modern historiography, arguably, has yet to offer a satisfactory explanation for this late-Victorian intellectual sea change.[1] Dicey's handling of the problem importantly illuminates how he thought about political dynamics, and how he conceptualised the drivers of political change over time.[2] His writing on the subject also opens up wider questions about fin-de-siècle imperial ideas, and political theory. Dicey's analysis of the rise of imperialist conviction reminds us that the phenomenon was not just a background to new currents of imperial political thought, but one of the transformations imperial thinkers aimed to explain.[3] This in turn reveals an even larger, similarly neglected development in

[1] Seminal studies of aspects of the problem include R Price, *An Imperial War and the British Working Class: Working-Class Attitudes and Reactions to the Boer War, 1899–1902* (London, Routledge and Kegan Paul, 1972); HCG Matthew, *The Liberal Imperialists: The Ideas and Politics of a Post-Gladstonian Elite* (Oxford, Oxford University Press, 1973); J MacKenzie, *Propaganda and Empire: The Manipulation of British Public Opinion, 1880–1960* (Manchester, Manchester University Press, 1984); see also MacKenzie's many other relevant publications, including the pioneering comparative J MacKenzie (ed), *European Empires and the People: Popular Responses to Imperialism in France, Britain, The Netherlands, Belgium, Germany and Italy* (Manchester, Manchester University Press, 2011); B Porter, *The Absent-Minded Imperialists: Empire, Society and Culture in Britain* (Oxford, Oxford University Press, 2004); D Bell, *The Idea of Greater Britain: Empire and the Future of World Order, 1860–1900* (Princeton, Princeton University Press, 2007).

[2] These issues lurk in the background in MD Waters, *A.V. Dicey and the Common Law Constitutional Tradition: A Legal Turn of Mind* (Cambridge, Cambridge University Press, 2021); J Kirby, 'A.V. Dicey and English Constitutionalism' (2019) 45 *History of European Ideas* 33; IC Fletcher, '"This Zeal for Lawlessness": A.V. Dicey, The Law Of the Constitution, and the Challenge of Popular Politics, 1885–1915' (1997) 16 *Parliamentary History* 309; J Stapleton, 'Dicey and his Legacy' (1995) 16 *History of Political Thought* 234; S Collini, *Public Moralists: Political Thought and Intellectual Life in Britain, 1850–1930* (Oxford, Oxford University Press, 1993) ch 7; D Sugarman, 'The Legal Boundaries of Liberty: Dicey, Liberalism and Legal Science' (1983) 46 *Modern Law Review* 102; C Harvie, 'Ideology and Home Rule: James Bryce, A.V. Dicey and Ireland, 1880–1887' (1976) 91 *English Historical Review* 1477.

[3] For a recent dissection of the state of the historiography on British imperial political thought see D Bell, *Reordering the World: Essays on Liberalism and Empire* (Princeton, Princeton University Press, 2016) chs 1–2.

the realm of British ideas: the growing preoccupation with the structural explanation of political change in the contemporary world.[4]

Dicey returned repeatedly to the problem of 'English imperialism' after the 1880s. He discussed the subject in most of his major legal and historical tomes, and in his journalism, particularly in articles for the American periodical *The Nation*.[5] This chapter draws on all these sources.[6] It dwells in particular, however, on the analysis outlined in Dicey's *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (1905/1914).[7] In a volume which was, in significant part, a statement of Dicey's growing alienation from a changing political world, pro-imperial sentiment stands out as almost the only novel current of opinion with which he enthusiastically associated himself.[8] So it is striking to find that Dicey explained its emergence as a (possible) consequence of many of the same forces which had given rise to the rebarbative philosophy of collectivism. His understanding of political dynamics was more materialist, more subtle, and more alive to paradox, than historians have tended to imagine.[9]

The chapter begins by re-reading Dicey's arguments about the drivers of change in modern British politics. It then turns to his analysis of the specific forces behind the growth of imperial sentiment. It concludes by reflecting on the implications of his schemes for our understanding of the shape of contemporary British political thought, imperial and otherwise.

[4] The main synthetic studies of nineteenth-century British political thought touch this theme at best very lightly: see eg HS Jones, *Victorian Political Thought* (Basingstoke, Palgrave Macmillan, 2000); M Francis and J Morrow, *A History of English Political Thought in the Nineteenth Century* (London, Duckworth, 1994); S Collini et al, *That Noble Science of Politics: A Study in Nineteenth-Century Intellectual History* (Cambridge, Cambridge University Press, 1984); C Brinton, *English Political Thought in the Nineteenth Century* (London, Ernest Benn, 1933). But see also the remarks in M Bevir, 'Review Article: English Political Thought in the Nineteenth Century' (1996) 17 *History of Political Thought* 114. By contrast, the scholarship on Victorian historiography has always concerned itself with historians' attempts to account for political change.

[5] For Dicey and *The Nation* see TH Ford, 'Dicey as a Political Journalist' (1970) 18 *Political Studies* 220; and, more broadly, TH Ford, *Albert Venn Dicey: the Man and His Times* (Chichester, Barry Rose, 1985).

[6] Dicey's comments on this chapter's theme in letters to the imperial scholar AB Keith simply restate positions Dicey took in print: RF Shin, Jr, and RA Cosgrove (eds), *Constitutional Reflections: the Correspondence of Albert Venn Dicey and Arthur Berriedale Keith* (Lanham, University Press of America, 1996).

[7] AV Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (London, Macmillan & Co, 1905); AV Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*, 2nd edn (London, Macmillan & Co, 1914). All references below are to the second edition, which includes a new introduction but barely changes the original text.

[8] Dylan Lino has ably reconstructed Dicey's wider imperial attitudes in D Lino, 'The Rule of Law and the Rule of Empire: A.V. Dicey in Imperial Context' (2018) 85 *Modern Law Review* 739; D Lino, 'Albert Venn Dicey and the Constitutional Theory of Empire' (2016) 36 *Oxford Journal of Legal Studies* 751.

[9] Since its mid-twentieth-century heyday, the book has attracted only a modest amount of intellectual-historical attention. This is presumably because more recent research on Dicey has tended to prioritise either his role as a jurist, or his career as an opponent of Irish Home Rule, to both of which projects the volume was marginal.

II. Dicey and Political Dynamics

Law and Public Opinion was based on a series of lectures first given at Harvard University in 1898, and finessed in repeat performances back in Oxford. It was the mature statement of an array of arguments Dicey had been developing in his journalism since the 1870s, about the impact of Benthamism and 'collectivist' ideas on the making of public policy, and about shifting currents of public opinion.[10] The book had a long academic afterlife, not least in underpinning classic mid-twentieth-century historical debates about the nature of the so-called 'Victorian revolution in government'.[11] Stefan Collini suggests that it did more to shape later perceptions of Britain's nineteenth-century political development than any other individual work.[12] But historians have always been more interested in testing the book's substantive claims about the influence of particular philosophical schools (or simply in setting them up as straw men) than in understanding the argumentative architecture of the work. Richard A Cosgrove concluded that *Law and Public Opinion* was 'more misleading than informative', and curiously overrated.[13] What attempts there are to capture Dicey's view of political dynamics tend to end up concluding that he was a species of idealist, and typically a rather unsubtle one. Harold Perkin, for instance, claimed that Dicey had a 'naive' view of political change, in which 'a great thinker thinks, and converts disciples, who in turn contrive to turn the master's thought into the dominant wisdom or accepted common sense of the age, which then finds its way onto the Statute Book'.[14]

Dicey's arguments were more complex than this. They were also pioneering. *Law and Public Opinion* was the first attempt by a prominent English intellectual at a sustained, full-dress study of the relations between political theory, the structure of politics, and public policy. Dicey was not, of course, the only turn-of-the-twentieth-century figure to present an ideologically-driven interpretation of recent historical change. In Britain we can point to Edwin Cannan, WEH Lecky, Leslie Stephen, and Graham Wallas, while over the Channel Élie Halévy

[10] For one of Dicey's early discussions of 'opinion' see AV Dicey, 'Louis Napoleon: 1851 and 1873' (1873) 13 *Fortnightly Review* 197. For more developed reflections on opinion and the opinion-forming classes see AV Dicey, 'A Phase of English Opinion' (1885) 41 *The Nation* 319.

[11] RA Cosgrove, *The Rule of Law: Albert Venn Dicey, Victorian Jurist* (Chapel Hill, University of North Carolina Press, 1980) 189–92. See also M Ginsberg (ed), *Law and Opinion in England in the 20th Century* (London, Stevens & Sons, 1959).

[12] Collini, *Public Moralists* 327.

[13] Cosgrove, *The Rule of Law* 183. It is striking, in this context, that the leading modern study of the concept of 'public opinion' in late-nineteenth and early-twentieth-century Britain has almost nothing to say about law and public opinion, or about Dicey more generally: J Thompson, *British Political Culture and the Idea of 'Public Opinion', 1867–1914* (Cambridge, Cambridge University Press, 2013).

[14] H Perkin, 'Individualism versus Collectivism in Nineteenth-Century Britain: a False Antithesis' (1977) 17 *Journal of British Studies* 105, 105. *cf*, however, Morris Ginsberg's observation that it was 'not clear' whether Dicey believed the connection between English law and currents of opinion was causal: Ginsberg, *Law and Opinion* vii.

was engaged on his own comparable studies of philosophic radicalism.[15] In *Law and Public Opinion* itself Dicey acknowledged debts to Stephen and Lecky, and also to the legal historian and political writer Sir Roland K Wilson.[16] He also offered (in the second edition) a warm endorsement of the scholarship of the then President of Harvard, A Lawrence Lowell, who published a weighty analysis of *Public Opinion and Popular Government* in 1913.[17] Dicey's study, however, was distinctive in several ways. It reached up to, and specifically sought to account for, the present; it was based on profound legal learning; and it possessed a breath of conceptual and political vision, and an associated disciplinary agnosticism, which separated it from other comparable contemporary works. This was, after all, a book which ranged between detailed analyses of the Combination Laws and the Married Women's Property Act, to discussions of the philanthropy of Richard Oastler and Lord Shaftesbury, to reflections on Dickens and Gradgrind. It requires its own treatment.

The stated purpose of *Law and Public Opinion* was to connect the changing shape of the law with 'the course of English thought'.[18] What did Dicey think lay behind the emergence and ascendency of new currents of opinion? And how did dominant opinions impact on the organisation of politics?

Dicey's argument about the connections between opinion, law, and politics was not a general or even a generalisable one. The foundation of *Law and Public Opinion's* thesis was the idea that nineteenth-century England was a distinctive political and social arena. England's peculiar constitutional development, the unusual organisation of its public culture, and its incomparable industrial wealth, underpinned a uniquely close connection between 'opinion' and the making of laws.[19] Unlike other countries, in nineteenth-century England changes in opinion were invariably gradual, and, vitally, the opposition between schools of thought was never violent.[20] So while the public opinion of other polities – often France, sometimes Britain's self-governing colonies – could at times be found moving in similar directions to that of England, the structural relation between opinion and law-making was not the same.[21]

Dicey glossed and qualified the concept of 'public opinion' extensively. But the essence of his definition was stable, within and beyond *Law and Public Opinion*. 'Public opinion', for Dicey, meant the dominant ideas about legislation held by

[15] Among the other scholars working at around the same time as Dicey on 'the intellectual underpinnings of the great achievements of the nineteenth century', from a series of different angles, were Edwin Cannan, Graham Wallas, Élie Halévy, and Leslie Stephen: JV Orth, 'On the Relation between the Rule of Law and Public Opinion' (1982) 80 *Michigan Law Review* 753, 759.

[16] Dicey, *Law and Public Opinion*, Roland K Wilson (ix), Leslie Stephen (x), WEH Lecky (178).

[17] ibid lxxii. Dicey described Lowell's book as containing 'the most subtle analysis of public opinion and the best account known to me of its relation to popular government' (lxxii).

[18] ibid vii.

[19] ibid 7.

[20] ibid 27, 36–37.

[21] ibid lxvii, 299–300.

citizens who took an effective part in public life.[22] This was something different from, and larger than, partisan commitment. Dicey's concept of opinion was deliberately hostile to the 'delusion' that English public feeling 'consists in the main of definite and rigid political dogmas'.[23] He argued that the most coherent, and extreme, political and social theories barely affected law.[24] This was not least because citizens often held logically inconsistent social theories together in their minds at once. Dicey at one point mooted the idea that Gladstone's powerful influence over later-Victorian England rested partly on his ability to represent the incoherent sentiments of his age.[25] In practice, the divisions of Dicey's 'opinion' mostly cut across political parties.[26]

Dicey contended that changes in this 'public opinion' were the major influence on changes in legislation. To some extent, they governed politics as well. While Dicey recognised that politics and law were not the same thing, he argued that in England, great changes in political ideas always mirrored changes in legislative opinion.[27] But if dominant currents of opinion were the major factor behind changes in the law, then where did those currents come from? Dicey's answer was not nearly as straightforward as Perkin and others suggest it was, that new ideas were simply conceived by 'great thinkers'.[28] Dicey did not think mechanically about the relation between law, politics, and opinion. He was, in fact, much more concerned with intellectual atmospheres than with individual actors, or the networks they belonged to. He explained that political arguments and philosophical speculations could rarely generate changes in public opinion by themselves. The English were more easily persuaded by ethical convictions than by elaborated ideas.[29] To shift the dial, and therefore to make an impact on law, arguments needed to be articulated within a receptive environment. But it was not the wider tenor of intellectual culture, or the complex interplay between different available views of politics and order, that played the leading role in making those environments receptive. Top billing was reserved for a different entity. This, for Dicey, was 'circumstances'.[30]

'Circumstances', or 'facts', were Dicey's shorthands for the material and external pressures that did more than anything else to shape the progress of opinion. Again and again, in Dicey's analysis, '[o]bvious facts told for more than argument'.[31] So England's 1801 Union with Ireland was not the result of theoretical

[22] ibid 10.
[23] AV Dicey, 'England in 1848' (1920) 234 *Quarterly Review* 221, 224.
[24] Dicey, *Law and Public Opinion* 18.
[25] ibid 273, 360.
[26] ibid 177.
[27] ibid 409.
[28] Though Dicey argued that the clear, programmatic character of Benthamite utilitarianism was among the reasons it gained the legislative hold it did: Dicey, *Law and Public Opinion* 443–44. See also the early passage about the power of single thinkers and schools, which Perkin may have had particularly in mind, at 21–22.
[29] AV Dicey, 'New Jacobinism and Old Morality' (1888) 53 *Contemporary Review* 475, 475.
[30] Dicey, *Law and Public Opinion* 26–27, 301–302.
[31] ibid 451.

advances, but of 'the immediate and irresistible pressure of events'.[32] The legislative flurry of the 1830s arose from the incongruity between England's changing social conditions, especially industrialisation and the growth of wealth in the North, and the country's static legal frameworks.[33] Dicey's explanation for why certain policies (like free trade) became successful often had a sociological bent, centred on the class position of their proponents.[34] The dominance of Benthamism in the middle decades of the nineteenth century, then, was a consequence not of Jeremy Bentham's genius, but of the harmonies of his eponymous philosophy with the political dominance of the middle class, and even more nebulously 'the spirit of the time'.[35] Dicey returned again and again to the determining power of 'patent facts' and 'political facts', insisting that it was often the most glaringly obvious circumstances which mattered the most, and emphasising – perhaps subtly, perhaps circularly – that no category of 'facts' was more important than pre-existing laws.[36] The examples offered by foreign countries invariably had less influence on English social and political movements than the 'logic of facts'.[37] In short, articulate theory had no inherent persuasive power, politically or legally, in the absence of authorising external circumstances.

Dicey commented midway through *Law and Public Opinion*, in one of his many attempts to crystallise his claims, that 'law and speculation, action and thought react upon one another'.[38] The line effectively captures Dicey's argumentative caution, and the indeterminacy of the relationships he wanted to capture. This formula was not precise, but *Law and Public Opinion* did not set out to be precise about the workings of political dynamics. On this front, the book was a provocative, expansive rumination on the driving forces behind political and legal change, not a comprehensive working-through of a distilled, defensible thesis. This was a necessary consequence of the breadth of political and disciplinary vision that separated Dicey from comparable contemporary scholarship. His treatment of political dynamics, then, was as much about circumstances as ideas, and was alive to contradiction and complication.

III. Dicey and the Growth of English Imperialism

In the final chapter in *Law and Public Opinion*, Dicey invited his readers to '[c]onsider the growth of English imperialism'.[39] This section of the book did not

[32] ibid 104. See also, for Dicey's claim that the pressure of events mattered more than the intentions of the originators of a system of thought, 310.
[33] ibid 111.
[34] ibid 25. See also eg 129.
[35] ibid 170–73, 187.
[36] eg Dicey, *Law and Public Opinion* liii, 47; ibid 42–44, 465.
[37] Dicey, *Law and Public Opinion* lxv. See also AV Dicey, *England's Case against Home Rule* (London, John Murray, 1886) 55–56.
[38] Dicey, *Law and Public Opinion* 255.
[39] ibid 450.

make much impact on contemporary reviewers, nor has it much appealed to later historians of Dicey's politics and thought. In some ways it was a curious subject for him to address in *Law and Public Opinion*, given the volume's primary focus on 'law-making' or 'legislative' opinion.[40] Greater public sympathy towards the British Empire had not – or at least had not in 1905 – had detectable consequences in the realm of domestic law-making. Dicey did take the view that changes in political opinion usually corresponded with alterations in legislative opinion.[41] But it is more relevant to note that the chapter in which the discussion appears – Lecture XII, on the 'Relation between Legislative Opinion and General Public Opinion' – is the most loosely conceived in the book. Here Dicey considers how 'law-making ideas' are reflected in other realms of thought, looking at theological opinion, at attitudes towards peace and economy, at the changing views of individuals including Harriet Martineau, Charles Dickens, and John Stuart Mill, at freedom of discussion, and at the historical method, as well as discussing imperialism.[42] So the attempt to explain the rise of imperial sentiment was not a foundational part of the argument of *Law and Public Opinion*. It was a way to flesh out broader contexts.

The state of public imperial sentiment was a long-standing theme in British imperial political thought. Complaints that public understanding of, and interest in, the empire was defective long pre-dated JR Seeley's diagnosis of a 'fit of absence of mind'.[43] The consequences of this supposed inattention for the soundness of imperial governance, especially in India, were widely discussed among commentators and thinkers from the late eighteenth century on. By the end of the nineteenth century, however, the problem was rather to explain what had driven an apparent surge in imperial patriotism. For most observers, a principal question was how to connect this phenomenon with mass democracy, and the rapidly rising political significance of the working-class electorate. Some proponents of 'Greater Britain'-style visions of imperial unity did their best to claim this new constituency for themselves, imbuing the working classes with a wise and well-founded imperial sympathy, while others argued that the working man needed to be won over to achieve closer imperial unity.[44] Imperial sceptics, like the English positivist Edward Beesly, tended to assert that the new working class voter was indifferent to the empire.[45] A few years before the publication of *Law and Public Opinion*, JA Hobson's classic 1902 *Imperialism: a Study* outlined a catalogue of the forces he perceived to lie behind the rise of imperial patriotism in England, including

[40] ibid 17.

[41] ibid 411.

[42] Parts of the chapter saw Dicey rework material already published elsewhere: *cf* eg AV Dicey, 'The Weak Side of the Historical Method' (1877) 24 *The Nation* 217.

[43] JR Seeley, *The Expansion of England: Two Courses of Lectures* (London, Macmillan and Co) 8, and see eg 177–78.

[44] eg WJ Courthope, 'Problems of Greater Britain' (1890) 15 *National Review* 433; JA Froude, *Oceana: or England and her Colonies* (London, Longmans, Green, and Co, 1886) 337. For a stimulating analysis of Froude's thought on this and other issues see D Bell, 'Republican Imperialism: JA Froude and the Virtue of Empire' (2009) 30 *History of Political Thought* 166.

[45] ES Beesly, 'The Causes of Modern Militarism' (1893) 1 *The Positivist Review* 33, 37–41.

patterns of teaching at schools and universities, newspapers, pulpits, imaginative and travel literature, politicians, and not least, selfish financial interests.[46] So Dicey was contributing to a debate, not identifying a new problem. He sought, moreover, to provide a deliberately partial anatomy of the problem of English imperialism, which he approached neither on its own terms nor with any great polemical purpose, to support wider conclusions.

To the Edwardian reader, the meaning of the phrase 'English imperialism' was not self-evident, having been put to a series of different purposes in recent decades.[47] Dicey made several attempts to pin it down. In 1901 he wrote simply that imperialism (a word he usually capitalised) meant the belief that one of the principal goals of the British government was 'to maintain the power and the authority and the greatness of England'.[48] In 1905, he clarified that the term 'Imperialism', having entered British political language in the 1860s as a shorthand for Napoleonic Caesarism, now meant more precisely 'the wish to maintain the unity and increase the strength of an empire which contains within its limits various more or less independent States'.[49] In the 1915 edition of the *Introduction to the Study of the Law of the Constitution* Dicey specified further that this wish should depend on 'definite and assignable reasons', mainly the conviction that the continued existence of a strong British Empire (usually) secured international peace.[50] In some settings Dicey defined 'imperialism' more narrowly, suggesting that the term signalled a belief that a robust alliance between Britain and its self-governing settler dominions was beneficial to both England and the rest of the world.[51] Dicey associated himself with all these contemporary descriptions of the imperialist agenda. Some other contemporary visions of the term were less sympathetic. He insisted that a healthy Imperialism did not have to dictate support for any kind of formalised imperial federation. This was a project Dicey thought politically, legally, and logically impossible, for reasons which he explained repeatedly, and at length, in his publications.[52] Nor, he insisted, did imperialism have to mean support for preferential tariffs.[53] But Dicey acknowledged that the emergence of

[46] JA Hobson, *Imperialism: A Study* (London, James Nisbet & Co, 1902) pt II, ch 3, esp 228–34.

[47] For the wider concept history of 'imperialism' see R Koebner and HD Schmidt, *Imperialism: the Story and Significance of a Political Word, 1840–1960* (Cambridge, Cambridge University Press, 1964).

[48] An Observer [AV Dicey], 'The Causes of Imperialism in England' (1901) 73 *The Nation* 203, 203. Sometimes Dicey included in his definition the desire to 'increase' the power of the empire: eg An Observer [AV Dicey], 'The Parliamentary Election in England: an English View' (1900) 71 *The Nation* 362, 363.

[49] Dicey, *Law and Public Opinion* 450. In this sense, for Dicey, the term was as applicable to the United States as to England.

[50] AV Dicey, *Introduction to the Study of the Law of the Constitution*, 8th edn (London, Macmillan and Co, 1915) xxxiv–xxxv.

[51] AV Dicey, *A Fool's Paradise: Being A Constitutionalist's Criticism of the Home Rule Bill of 1912* (London, John Murray, 1913) xxxi. For Dicey this alliance would rest on pooling contributions to defence, and on fuller consultation between Britain and its colonies: 25. For the wider intellectual context see Bell, *Greater Britain*.

[52] AV Dicey, *Letters on Unionist Delusions* (London, Macmillan and Co, 1887) 51–58; Dicey, *Law of the Constitution* lxxiv–lxxxxiii.

[53] AV Dicey, 'To Unionists and Imperialists' (1903) 84 *Contemporary Review* 305 esp 311–15.

these less persuasive strands of Imperialist thought belonged to the same wider process of intellectual metamorphosis.

The starting point of this new current of sentiment was not altogether clear in Dicey's mind. He thought its emergence was a historical novelty, rather than a high point in an established cycle, representing 'a new-born sense among Englishmen of their membership in a great imperial state'.[54] He positioned its origin variously in 1850, the 1870s, 1884, 1886, and at one point, in the context of his late-in-life study of the Anglo-Scottish Union, in the mid-eighteenth century.[55] In general, however, Dicey tended to see Imperialist sentiment as taking hold in the 1880s and 1890s. This is certainly when he became aware of its growth. In 1886 Dicey reflected that statesmen were still uncertain whether England's democracy really valued imperial greatness.[56] But by 1901, he was entirely persuaded that imperialism was 'the dominant faith of modern Englishmen', cutting across the age's formal political parties.[57] Unlike many of his fellow proponents of closer imperial unity, Dicey did not seek to press beyond 'modern Englishmen' to divisions of class, and the pressing question of why working class voters seemed to have taken to empire. Broad brushstrokes served Dicey's purposes.

The diffusion of English imperialism rested mainly on a growing sense of unity with the dominions, but Dicey also perceived analogous spikes of interest in parts of the dependent empire. Egypt arrested public attention in the early 1880s, and made him worry about the inconsistency of educated liberal thinking about Britain's proper policy towards the state.[58] This was fleeting, but Dicey detected the emergence of a more robust public interest in India after the Mutiny of 1857. This was driven, he thought, largely by the abolition of the East India Company and the new career opportunities Crown rule offered to the literary classes, by Britain's declining role in Continental politics, and by the (seeming) resolution of the great domestic political questions.[59] Dicey also noted that more general reflection on the facts of Indian civilisation might unsettle the organising ideas around which English law revolved.[60]

[54] Dicey, *Law and Public Opinion* 411. See also Dicey's claim in 1915 that World War I was Britain's 'first great imperial war': AV Dicey, *How We Ought to Feel about the War* (London, Oxford University Press, 1915) 15–16.

[55] For 1850 and 1886 see Dicey, *Fool's Paradise* xxxii; for the 1870s see Dicey, *Law and Public Opinion* 454–55; for 1884 see Dicey, *Law of the Constitution* xxxiii; for the eighteenth century see AV Dicey, *Thoughts on the Union between England & Scotland* (London, Macmillan & Co, 1920) 302–303.

[56] AV Dicey, 'The Permanent Difficulties of English Foreign Policy' (1886) 42 *The Nation* 95, 95.

[57] Dicey, 'Causes of Imperialism' 203. See also Dicey, 'Parliamentary Election' 362.

[58] AV Dicey, 'English Popular Opinion about Egypt' (1882) 35 *The Nation* 418. Dicey's brother wrote extensively about Egypt, and there are overlaps in the two men's thinking about the country. *cf* E Dicey, *England and Egypt* (London, Chapman & Hall, 1881); E Dicey, *The Story of the Khedivate* (London, Rivingtons, 1902); E Dicey, *The Egypt of the Future* (London, William Heinemann, 1907).

[59] [AV Dicey], 'The Influence of India on English Opinion' (1876) 22 *The Nation* 82, 82–83. See also [AV Dicey], 'Thirty Years of European History – I' (1890) 51 *The Nation* 327, 327.

[60] [Dicey], 'Influence of India' 83. See also [AV Dicey], 'Wheeler's Short History of India' (1880) 31 *The Nation* 240; AV Dicey, 'Imperial Rule in India – I' (1899) 83 *The Spectator* 280; AV Dicey, 'Imperial Rule in India – II' (1899) 83 *The Spectator* 312.

But the question is how Dicey accounted for the rise, and triumph, of Imperialist sentiment. The identification of comparative contexts was not the answer.[61] The premise of Dicey's studies of public opinion was that England was a distinctive arena, and moreover Dicey shared the assumption of most of his contemporaries that the British Empire was a political entity of a quite different kind from other empires.[62] Nonetheless, a significant part of Dicey's explanation lay in his preferred bedrock of grand-scale external circumstances and facts. For Dicey 'sane imperialism' was rightly premised on 'the recognition of patent facts'.[63] Here those facts were made to appear even more ineluctable than usual, presumably because Dicey wanted to persuade his audience of the wisdom of the creed. He argued that imperial unity was 'fully defensible on the grounds of good sense and of justice', not least because it harmonised so well with the Unionist cause in relation to Ireland.[64] Imperialism was, Dicey claimed, 'the result of causes so potent and real that it is vain to hope that nations can escape from their influence'.[65] These included the great technological changes of the age – trains, steamships, telegraphs – which had brought the world closer together.[66] More specific to the 1880s and 1890s was the rise of great military states and the growth of great empires, alongside the decline of petty polities. These developments made imperial unity a rational way to defend against foreign aggression, and stimulated the desire for transoceanic imperial expansion.[67]

These facts were reflected, as Dicey claimed all such patent facts of higher significance were, in the writings of contemporary thinkers. In this connection, he liked to cite JR Seeley, JA Froude, and – perhaps less predictably for modern students of imperial political thought – the American Alfred Thayer Mahan, the reviver of Admiral Nelson's reputation, who Dicey strikingly placed first among the group.[68] Dicey claimed that Mahan's writings on Nelson, 'from their great power and from their singular opportuneness', had exerted an influence on English politics as great as that of any leading statesman.[69] But what allowed the ideas of these thinkers to

[61] *cf* AV Dicey, *Comparative Constitutionalism*, JWF Allison (ed) (Oxford, Oxford University Press, 2019).

[62] Dicey, *Law of the Constitution* lxxxi, 346; An Observer [AV Dicey], 'Possible Effects on England of Japan's Triumph' (1905) 81 *The Nation* 315. For some intellectual contexts for the latter article see C Tonooka, 'Reverse Emulation and the Cult of Japanese Efficiency in Edwardian Britain' (2017) 60 *Historical Journal* 95. For an example of Dicey distinguishing between different foreign imperialisms, in this case French and German, see RS Rait, *Memorials of Albert Venn Dicey: Being Chiefly Letters and Diaries* (London, Macmillan and Co, 1925 [1882]) 81.

[63] Dicey, *Fool's Paradise* 30.

[64] Dicey, *Law and Public Opinion* 455; Dicey, *Fool's Paradise* xxxii.

[65] An Observer [AV Dicey], 'The Constitutional Aspects of Mr Chamberlain's Journey' (1902) 75 *The Nation* 477, 478.

[66] Dicey, *Law and Public Opinion* lxv; Dicey, 'Causes of Imperialism' 203. See D Bell, 'Dissolving Distance: Technology, Space, and Empire in British Political Thought, 1770–1900' (2005) 77 *Journal of Modern History* 523.

[67] Dicey, *Law and Public Opinion* 456; Dicey, 'Causes of Imperialism' 203. Dicey also suggested that the shift rested, to some degree, on 'the lessons of history', though Dicey did not develop this point, presumably in part thanks to his scepticism about the historical method: *Law and Public Opinion* 457; and see [Dicey], 'Weak Side of the Historical Method'.

[68] Dicey, 'Causes of Imperialism' 203.

[69] ibid 203.

cut through, Dicey continued, was a particular condition of public sentiment. The decline of fervent democratic ideologies, of utilitarianism, and of nationalism, had created room for new faiths. From this angle Dicey could suggest that 'English Imperialism is, looked at from its good side, a new form of the undying belief in progress'.[70] Admiration for national and imperial bigness, he claimed, also had 'some real connection with what is vulgar in democratic institutions'.[71]

These were the broad strokes of Dicey's explanation for the growth of English imperialism. But his treatment of the theme served two wider argumentative purposes. The first was to buttress his case about how and why individualistic Benthamism had been superseded by collectivist ideas and policies. Dicey proclaimed in an article for *The Nation* in 1900 that the growth of imperialism was 'simply one aspect of the renewed faith in the benefits to be conferred upon the world by the intervention of the state'.[72] He did not explain what he meant, but it is possible to make sense of the point through the lens of Dicey's later works. *Law and Public Opinion* claimed that among all the realms of public life, it was in the field of colonial policy that Utilitarian principles had achieved their most complete hegemony. As *laissez-faire* became 'the order of the day' towards the middle of the nineteenth century, there was no sphere of action in which 'the trouble saved by leaving things alone' was 'more obvious than in England's government of colonies'.[73] George Cornewall Lewis's Austinian *Essay on the Government of Dependencies* of 1841 represented 'the application to our colonial policy … of the tenets propounded by Bentham', arguing that the colonies should be where possible left alone, with the ultimate end being a friendly separation.[74] For Dicey, the (supposedly) separatist views of Cobden and the Manchester School represented the dominant current of mid-Victorian opinion.[75]

But the period since, he said, had seen a thorough change in 'the whole spirit of our colonial policy'.[76] In the 1915 edition of *Law of the Constitution* Dicey insisted that imperialism was 'the natural result of historical circumstances', and more precisely the 'admirable fruit' of the Benthamite policy of *laissez-faire*.[77] Leaving the self-governing colonies to their own devices had drawn the sting from their

[70] ibid 204. For Dicey on the decline of nationalism see also AV Dicey, 'Garibaldi and the Movement of 1848' (1882) 34 *The Nation* 540. For the comparable arguments of Dicey's brother on the trajectories of nationalism see P Towle, 'Edward Dicey, Mass Politics, and International Affairs' (2014) 25 *Diplomacy & Statecraft* 61.

[71] Dicey, 'Causes of Imperialism' 204. Dicey was not certain, however, whether democracy in Britain would ultimately prove compatible with the maintenance of imperial power: AV Dicey, *Letters to a Friend on Votes for Women* (London, John Murray, 1909) 90–91. It might be suggested, further, that since Dicey was aware of the virtues of vagueness in creeds that managed to move large numbers of citizens, the nebulousness of imperial sentiment may have aided its rise: AV Dicey, 'July 14, 1789 – July 14, 1880' (1880) 31 *The Nation* 109, 109.

[72] Dicey, 'Parliamentary Election' 363.

[73] Dicey, *Law and Public Opinion* 451. *cf* JA Froude's more politically-minded analysis of this phenomenon: Froude, *Oceana* 330–36.

[74] Dicey, *Law and Public Opinion* 451–52.

[75] ibid 452–54.

[76] ibid 454–55.

[77] Dicey, *Law of the Constitution* xxxvi.

earlier, understandable discontent, and laid the foundations for the growth of pan-imperial cordiality. So this was a latter-day triumph for Bentham, and Dicey therefore rejected the Prime Minister HH Asquith's idea, outlined at the Imperial Conference of 1911 held to celebrate George V's coronation, that the British Empire had somehow been saved from a meagre mid-nineteenth-century choice between centralisation and disintegration by the inherent political instincts of the race.[78] *Law and Public Opinion* further clarified that the rise of pro-imperial sentiment, and the decline of Cobdenite *laissez-faire* in British colonial policy, had run alongside declining faith in peace and economy as desirable goals.[79] Benthamite liberalism, Dicey went on to claim, could not 'naturally blend' with the sentiments of imperialism and nationalism, because its 'real affinity' was with philanthropy and cosmopolitanism.[80] So it is possible to see why he might have deemed imperialism an ally to collectivism in 1900. But he does not seem to have been sure. Usually wary of making political predictions, Dicey nonetheless suggested in the 1914 edition of *Law and Public Opinion* that novel combinations of patriotism and imperialism might reinforce impatience about excessive taxation, and create new cross-currents of anti-socialist opinion.[81]

The second thesis for which Dicey's discussion of English imperialism was a case-in-point was about the penetration of a politics of feeling into the public culture of the nineteenth century. The later lectures in *Law and Public Opinion* return repeatedly to the nineteenth century's intellectual and moral reaction against the rationalism of the eighteenth.[82] Dicey found this to be the motivating force behind the activities of the High Churchmen of the 1830s, and John Stuart Mill's early manhood, among other things.[83] Dicey posited that a new prioritisation of emotion, which in his words 'has been called the apotheosis of instinct', had ultimately proven to be one of the principal solvents of the Benthamite hegemony.[84] A new conviction that humans could not be studied only as rational actors undermined the basic premises of the Benthamites. Since the middle decades of the nineteenth century, appeals to instinct had taken on new importance in British public life.[85] This was what imperialism illustrated. Dicey argued that resistance to Boer separatism at the turn of the twentieth century was motivated not by the application of a dry utilitarian calculus, but instead by emotional intangibles. It was owed to 'a sense of the greatness, to the memory of the achievements,

[78] tbid xxxiii.
[79] Dicey, *Law and Public Opinion* 411.
[80] ibid 464.
[81] ibid lxxxvii. For his more conventional unwillingness to speculate on the future of imperial sentiment, see eg Dicey, *Law of the Constitution* xxxvi. Dicey argued elsewhere that it was the fear of socialism and its threats to property which had pushed the landowners of France into the arms of the Imperialism of the Second Empire: AV Dicey, *A Leap in the Dark: or Our New Constitution* (London, John Murray, 1893) 150.
[82] For wider context see J Bennett, 'A History of "Rationalism" in Victorian Britain' (2018) 15 *Modern Intellectual History* 63.
[83] Dicey, *Law and Public Opinion* 332, 423.
[84] ibid 433, 448.
[85] ibid 449.

and to faith in the future, of the British Empire'.[86] This pattern of sentiment was fostered by ritual and by literature, including the annual crowning of Nelson on his column, and the writings of Rudyard Kipling, alongside those of Dicey's other favourite imperial authors already cited.[87] Utilitarians could not compute these feelings. Imperialism, Dicey explained, was 'to all who share it a form of passionate feeling; it is a political religion, for it is public spirit touched with emotion'.[88] As he put it elsewhere, '[l]oyalty to the Empire, typified by loyalty to the King, is in short a sentiment developed by the whole course of recent history'.[89]

Dicey's explanation for the rise of imperial sentiment in late-nineteenth-century Britain, then, does not include several of the central dynamics posited by his contemporaries, including ones which have appealed to modern historians. Dicey was not interested in the idea that imperialism was a natural consequence of, or a means of disciplining, a burgeoning British democracy. Indeed, he was at pains to dismiss democratisation as an autonomous driver of legislative or political change in any particular direction.[90] The possibility that individuals might have mattered in fostering imperial enthusiasm, and in particular that Benjamin Disraeli was 'the forerunner of imperialism', was for Dicey 'not quite without reason', but was clearly not very persuasive.[91] Dicey's preferred arguments about the rise of imperial sentiment were, plainly, partial and convenient. The notion, for instance, that the transition to responsible government in the settler colonies was a straightforward application of *laissez-faire* – rather than being driven by a combination of colonial discontent, administrative practicalities, arguments about rights, and a particular phase of political liberalism – was designed to serve a specific argumentative purpose.[92] Precisely because this was the case, however, Dicey's claims neatly demonstrate the need for historians of imperial thought to reflect further on how ideas about shifts in currents of imperial public opinion intersected with broader debates about late-nineteenth and early-twentieth century politics and society.

IV. Conclusion

Historians have been debating how political ideas and theories shaped the course of nineteenth-century British politics since the 1970s.[93] But they have rarely asked how contemporaries tried to conceptualise the relations between intellectual and

[86] ibid 456.
[87] ibid 456.
[88] ibid 457.
[89] Dicey, *Law of the Constitution* xxxv.
[90] Dicey, *Law and Public Opinion* Lecture III.
[91] ibid 452. See also Dicey, 'Permanent Difficulties' 95.
[92] *cf* eg J Parry, 'The Third Earl Grey, Liberalism, and the British Empire' (2024) *Modern Intellectual History* (First View) 1.
[93] For commentary on some of the relevant historiography see D Craig, '"High Politics" and the "New Political History"' (2010) 53 *Historical Journal* 453; A Middleton, '"High Politics" and its Intellectual Contexts' (2021) 40 *Parliamentary History* 168; A Middleton, 'Ideas in Politics in International Context' (2023) 94 *Political Quarterly* 290.

political change.[94] So it is no surprise that historians of imperial political thought have concentrated on the ways in which sophisticated writers on empire attempted to persuade their audiences into (or out of) imperial enthusiasm, or to frame new schemes of policy, at the expense of asking how they explained changes in public imperial attitudes. Understanding how contemporaries thought about the links between politics, theory, and opinion, and why political writers came to treat the relations between these things as an increasingly important problem in the late nineteenth century, must be an important step towards making sense of questions of political causation. At the least, without exploring how political writers characterised the mechanisms of political change, it is difficult to grasp what they imagined their writing could achieve.

Dicey was among the earliest and most thoughtful British scholarly commentators on the structural relations between politics and ideas. Looking at *Law and Public Opinion* within this framework helps us to grasp what he meant the book to do. Its purpose was not (just) to index phases of public opinion, but to investigate the dynamics driving political and legal change in contemporary Britain. Dicey's vision was much less about the independent power of 'great' thinkers and ideas to drive shifts in law and opinion, than it was about the peculiarities of nineteenth-century England, and the material circumstances and 'facts' which lent particular patterns of thought conviction in the country's very specific political, social, and global contexts. The 'growth of English imperialism' was an important case in point. It could not be understood in isolation from technological developments, and large-scale realignments in international power politics. But it also had something slightly indeterminate to do with local realignments between Benthamite and collectivist ideas, and something more definite to do with the new role of emotion in the politics of the later nineteenth century. The Dicey on display in this realm of *Law and Public Opinion*, then, was not a programmatic thinker. He did not have an inflexible idealist scheme to apply, but was instead a cautious, uncertain, and strikingly materially-minded analyst of political and intellectual change.

In outlining these interlinked analyses, Dicey captured and in some ways heralded a significant new development in British political thought around the turn of the twentieth century. This was the drive to find explanations for recent political change – of which new currents of Imperialist thought and practice were conspicuous elements – in ways that went beyond the 'historical method' and semi-abstract philosophy to the sustained, structural analysis of contemporary political and intellectual processes. Anticipated in many particulars by earlier, less celebrated commentators, Dicey's work helped to inject the theme into the 'high' intellectual culture of his maturity.[95] The contexts and consequences need much more work, but it is clear that Dicey was in this respect – as in so many others – a pivotal figure.

[94] There are important gestures in this direction in C Barrell, *History and Historiography in Classical Utilitarianism, 1800–1865* (Cambridge, Cambridge University Press, 2021).

[95] See eg A Middleton, 'William Rathbone Greg, Scientific Liberalism, and the Second Empire' (2022) 19 *Modern Intellectual History* 681.