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CHAPTER THREE

Imperial Sovereignty

Thirty years or so after the apparently most serious and hotly disputed 'French' arguments over authors and authority within the academic study of English, we find that their fallout has in fact been quite effectively recuperated into the subject. 'Theory' as one domesticated element of a modular English degree has turned out to be quite useful in, among other things, confirming a prior default centre which can again assume the form of an author-based and authoritative canon. So like every other extrinsic threat, 'French theory' is effectively absorbed into English precedent. Most seminars, study guides, interviews, biographical paraphernalia, and other publishers' materials are, or until very recently have been, dependent on a methodology which aims to piece together the worldviews of model sensibilities, and turn these exemplary visions into a single continuous story of English, whatever twists this great story is imagined to take. The persistence of the individual author as a structuring principle certainly has something to do with Lockean self-ownership. It has something to do with the modularization of degrees which allows for 'theoretical' questions to be disengaged from, or to be 'used on' primary texts, confirmed as the core business of canonical English (and which will likely be even more so with the marketing of English as a 'hard' subject during the present moment of financial rationalization in universities in England). It also has something to do, though, with the late-Romantic metaphysics of literary form turned against collective action. With the streamlined canon of exemplars as legitimation of political power, *canonicity* emerges as a tool to universalize franchise in empire.

After the Napoleonic Wars and the domestic turmoil of the 1820s and 1830s, the ideally disinterested meritocracy of Coleridge and Mill would take strikingly different but comparable forms – one becoming iconic in the Thomas Carlyle who suggested a radical strengthening of a version of traditionalist individualism, and one in the Matthew Arnold whose uplifting aestheticism would set the tone for modern criticism.¹ Both versions move to head off a nascent democracy with a strengthening of 'aesthetic aristocracy' within the bounds of the informal constitution. The guardian class or clerisy would be selected by a state which stood 'beyond' (as befits the alienation

built into Britishness as the money form), and would work to hold off the excesses of shared experience under modern conditions. And as above, since informal constitutions tend to be based on individual self-ownership and disciplined sets of ideal exemplars,² the British paradox is that abstraction is contained in opposition to abstraction, taking the form of an ideal continuity.³ The question of governance is in this case categorically also the question of textuality: since a text is an *historical* record, fixed to an experienced time, the management of text is crucial to an informal constitution which needs to avoid the registration of experience.

So, Carlyle expands the Romantic need for exemplars into an extreme form of individualism, which nonetheless remains within the trajectory of an ideal clerisy: his new aristocracy moves onwards both from the Walter Scott imagined to have given in to antiquarian compromise (though Carlyle's personal antagonism to Scott is well documented by Robert Crawford),⁴ and from a failed idealism perceived in Coleridge as blocking the emergence of a more powerful lay-clerical force, the 'priests of our new church'.⁵ By 1829, Carlyle was distinguishing between mechanistic and *dynamic* thinking (the latter allowing for the incorporation of an anti-formal action rather than being stuck to the contemplative-organic),⁶ and diagnosing the dangers of a mechanical age, against which he aimed to radicalize conservatism along lines of individual will.⁷

Correspondingly, Carlyle's *The French Revolution* (1837), rather than insisting on either a Jacobin or an anti-Jacobin ethics, personalizes the whole story, turning its belligerents into heroes, and foregrounding the question of individual strength. This account of the revolution could be said to reverse the method of Walter Scott: if Scott's often-assumed role is as one of the first great writers of *historical fiction*,⁸ allowing for a background history to be played out as a human drama, Carlyle aims at something like the opposite, a *fictional history*. The victorious British constitution is still universally and eternally right, as is proven by its ability to produce a Shakespeare,⁹ but it must be reinvigorated in order to thrive. As labour concentration is seen still to risk the dangers of collectivity once deflected by the anti-Jacobinism of the 1790s, a radical anti-formal individualism has to be helped into ascendancy.¹⁰

In his homage to the heroic in *Past and Present* (1843), Carlyle further 'activates' the Burkean distinction between representation in words – an illegitimate popular claim to experience – and continuant right – a legitimate

claim by the standing and therefore 'time-honoured' authority.¹¹ Heroism, or the radical individualism of the cultural exemplar, is for Carlyle recalling the terms of Wordsworth's nature, the 'soil of all social business among men',¹² to be pressed into service against organized combinations and neo-Jacobin insurgency: '[h]ero-kings, and a whole world not unheroic – there lies the port and happy haven, towards which, through all of these, stormtost seas, French Revolution, Chartism, Manchester Insurrections, that make the heart sick in these bad days, the Supreme Powers are driving us'.¹³ The informal constitution is made dynamic by certain individuals worthy of universalization, and a kind of 'action' is incorporated insofar as it is able to elude a definite historical language. Action becomes a set of exemplars on a seamless timeline – and English Literature, as the continuum drawn between these moments, is modest, gentlemanly, silent. 'National' silence was of course in a sense a self-fulfilling idea, since it had been demanded by the anti-Jacobin fear of the literate mob, but in Carlyle the formulation of silence becomes clearer: although great deeds can and should be performed by 'England' (Britain) around the world, it is now understood that the informal constitution means that speaking these deeds would break the spell of the continuant authority which made them possible. This moment, indeed, is one of the origins of the 'English silent people' myth, a myth which, although revived in the twentieth century era of devolution, has almost always only been repeated by *British* nationalists bearing a 'grudge nationalism' they impute to England:¹⁴ in this tradition, the 'English' don't have to speak their power, and are too polite and too pragmatic to do so.

In the Burke-Carlyle sense, 'they' *can't* speak, of course, because to do so would be to formalize 'their' power, to fix them to a place which must be represented, which is certainly not England, nor even Britain in a territorial form, but an movement ever outwards. In *Past and Present*, the authority of literature as a surrogate constitution is then praised as the animus of an imperial rule which can never declare itself:

The English are a dumb people. They can do great acts, but not describe them. Like the old Romans, and some few others, *their* Epic Poem is written on the Earth's surface: England her mark! . . . And yet they did produce one Shakespeare: consider how the element of Shakespearean melody does lie imprisoned in their nature.¹⁵

The spread of the franchise then draws on a perfectible constitutional culture understood in terms of Burkean continuity: '[t]he Future hereby is not dissevered from the Past, but based continuously on it; grows with all the vitalities of the Past, and is rooted down deep into the beginnings of us. The English Legislature does not occupy itself with epochs'.¹⁶ A new dynamism (that is, imperial expansion) can reinvigorate Burkean Romanticism by directing its sensibilities, as ever particularly centred on the special sensibility that proves special sensibilities, Shakespeare, used as a frontispiece in many editions of Carlyle's book. The heroic also encourages an examinable yardstick of competition for the aesthetic elites, leading to, among others, the colonial Civil Service, described by Chris Baldick and others as driving the development of English.¹⁷

So if a purpose of Coleridge's clerisy had been to outmanoeuvre class conflict while deflecting criticism of the informal organic constitution, Carlyle goes further to spurn the bourgeoisie and any other socioeconomic class which might block aesthetic leadership, and so allow 'national' destiny to be obscured by the minutiae of material life.¹⁸ So in *Past and Present* the man of letters is the one who transcends his age rather than occupying it,¹⁹ and *Of Heroes, Hero-Worship and the Heroic in History* (1841) puts history squarely into the possession of the strongest individuals.²⁰ Heroic effort is also of course tied into the mid-century gentlemanly athletic competition which acts as an aspirational source of imperial unification and stratification, leading to the moment of *Tom Brown's School Days* (1857).²¹

As ever the greatest weight is borne by Shakespeare, a 'free gift of Nature',²² and a figure able to see the *insides* of situations – to grasp the metaphysics of literary form – and now able to unite the whole Anglosphere.²³ So although the ideal franchise has become global and, for Carlyle at least, heroic, it is still fought out on the terrain of literary management: '[p]rinting, which comes necessarily out of Writing, I say often, is equivalent to Democracy: invent Writing, Democracy is inevitable'.²⁴ But democracy should only be entrusted to those able to see the heart of nature, of which individuals Carlyle provides a list (a list which oddly enough would have included Robert Burns – if only he had written in Standard English).²⁵

A slightly softer variation of the mid-Victorian informal and aestheticized constitution is found in the Matthew Arnold of the 1860s, who also stands for a wider imperial 'cultural turn' in the 1850s and '60s. In *Culture and Anarchy* (1867), poetry's metaphysical force offers a way out of the

materialist malaise which is endemic to merchant society – and this time the metaphysical force is congruent, as luck would have it, to a British state which is already able to embody the ‘best self’ of each individual.²⁶ This best self, after the form of the *Lyrical Ballads*, understands the spiritual in terms of poetic form and vice versa, although for Arnold Romanticism had over-advanced ideas, leaving behind it the need for a long period of informal recuperation. Arnold’s ‘Democracy’ (1861), which might at a glance seem like an early argument for the freedom of the liberal arts, tellingly opens with an epigraph from Burke on the moral dangers to literature of *reducing* governmental authority: strong aesthetic control is as important to the high era of empire as it was to the anti-Jacobin one.²⁷ Where the aristocracy had previously been an exemplar of greatness of spirit,²⁸ in the industrial age the real audience for cultural-constitutional reform had to be, as Wordsworth’s Preface predicted, the aspiring middle class, potentially prone to Jacobinism and needful of protection from vulgar egotistic lures and from the ‘total democracy’ which, Arnold claims (not sympathetically), has been achieved in France.²⁹

This appeal to the aesthetic sensibilities of the established middle class, perennial in the history of the British constitution, would be increasingly tested and codified during the highest era of imperial expansion, in the various forms which seemed to firm up the history of the discipline,³⁰ leading to the partially justified assumption that Arnold stands behind twentieth-century English. ‘Democracy’ here becomes the form of aesthetic civilization which results from the British middle class’s pooling their best selves: ‘[b]y giving them a national character, it can confer on them a greatness and a noble spirit’.³¹ Although the state is instrumentally ‘the representative of the acting-power of the nation’,³² it also provides ‘an ideal of high reason and right feeling . . . commanding general respect, and forming a rallying-point for the intelligence and for the worthiest instincts of the community, which will herein find a true bond of union’.³³

This appeal to ‘right feeling’ is perhaps the peak of mid-Victorian aesthetic betterment as a buffer against popular democracy:³⁴ what Arnold describes as barbarism can, he explains, be avoided by state intervention into school curricula, a *modus operandi* that would eventually be vindicated by secondary school reform and by the disinterested formal analysis which developed with university English in the twentieth century.³⁵ Arnold’s ‘Democracy’ sets itself against both religious dissenting and collective politics,³⁶ aiming

to adapt civilization to the older role of the aristocratic ennoblement now in decline. What this offers, along with a confirmation of the benefits of 'English' civilization, is an answer to the new difficulty perceived in maintaining the franchise of imperial territories: the essay was published four years after the 1857 Indian Mutiny, and the cost of guarding against such insurrections suggested that franchise would increasingly require a vigorous cultural mission where force alone would not suffice. The benevolent guidance of a properly educated transmitter middle class was then necessary to the informal integrity of the empire, with vernacular English classics becoming central to the curriculum and working alongside Classics and biblical study.³⁷ The parameters of the whig conception of English are underlined in Arnold's 'The Function of Criticism at the Present Time' (1864), in which the organicism of the late Tudor era is vindicated by the 1688 restoration, and is seen as maintaining 'non-dissociated' language still connected to the objects and emotions it described – an ideal which would survive all the way through to the Tripos remaking of the subject.³⁸ Here Arnold praises the clerisy's ideal disinterestedness, which he now calls political impracticality,³⁹ as well as the Burke who stands against action and 'saturates politics with thought'.⁴⁰ Literary criticism is by now acknowledged as more important for what it prevents than for what it does, and its ability to keep untouched by history that added informal element which makes literature special and appropriate for governance.⁴¹

In *Culture and Anarchy* moreover the state as the set of best selves reaches towards the ideal of 'do[ing] away with classes'⁴² – which means also avoiding the language of collective experience, and stressing the need for a study of spiritual perfection.⁴³ The divine community which Coleridge and his followers had rescued from the excesses of Romanticism is also now given to the service of a 'culture which believes in making reason and the will of God prevail'.⁴⁴ Again, it so happens that these values already precisely exist in the British 'idea of the whole community, *the State*' – which must be perpetually raised over popular, common, or formal ideas of the national.⁴⁵ Religious conformity and interpersonal sympathy are then the marks of humanity which 'establish' 'English' (British) national culture,⁴⁶ and as ever these duties precede rights rather than vice versa.⁴⁷ The state is a source of 'worship' but not of fanaticism – that is, not of political action – and literary value represents the perfectibility of civility *outwith* action.⁴⁸ A disciplined aesthetic then, rather than accepting the possible existence of material

social classes, creates a harmony between estranged castes – the Barbarians (the decadent aristocracy), the Philistines (the mercantile bourgeoisie), and the Populace (the ignorant class to be moulded) – and transcending these differences becomes the state purpose of English literary study.⁴⁹

So despite the material gains of empire, British ‘national’ greatness can never be *presented* in material terms – its governance must concentrate on the incitement of admiration of ‘higher and spiritual ends’.⁵⁰ This aesthetic order is now defined (in a way which can be related broadly to British whig conservatism) in terms of a convergence of Hellenic thought – the push to see things as they really are – and Hebraic thought – the demand for conduct and obedience: so where the Renaissance usefully returned Hellenism to England, the ‘Indo-European’ English people have been left in need of Hebraism for moral discipline.⁵¹ As free trade and mechanization, and so labour concentration, have forced the extension of the franchise, they have also endangered ideals of the good,⁵² in this case represented by the aesthetic balances of constitutional culture.⁵³

The positivist settlement nevertheless guarantees that ‘England’ (Britain) has always already attained a ‘relative moral perfection’ in avoiding formal codes,⁵⁴ with the state as best self acting as a guard against the vulgar literacy which would leave a metaphysical lack, a ‘British form of atheism’.⁵⁵ The newspaper reporter and the commercially minded Member of Parliament then represent types of the uncivilized mercantile bourgeois, or Philistine, a biblical term reworked here to connote 1790s anti-Jacobin accusations of radicalism.⁵⁶ The loss of desire for aesthetic perfection is of course made worse by increasing division into vulgar economic classes – leaving the perpetual demand to keep purifying the ground of heritage, which now becomes the function of what would become known as English literary criticism.⁵⁷

Arnold’s ‘aristocracy of talents’ bisects the anti-Jacobin clerisy and the twentieth-century meritocracy, and encourages a general penetration of the right kind of culture, but only via that section of the middle class allowed global governing power.⁵⁸ And this extension of constitutional culture is encouraged not only through a Lockean promise to develop un-cultured soils, but also ‘out of love and kindness’, a ‘dutiful’ and philanthropic imperial cohesion which would in the context of mid-Victorian imperial morality increasingly attract mainstream constitutional legitimation, most significantly in A. V. Dicey.⁵⁹ If the most obvious literary-critical inheritor

of Arnold's classless aristocracy of talents is F. R. Leavis, the idea would nevertheless enjoy a much more general dominance throughout social thought from the 1860s to the 1950s.⁶⁰ Chris Baldick's *The Social Mission of English Criticism 1848–1932* (1983) thus puts Arnold at the apex of the long trajectory of examined, objective, or 'disinterested' English, and takes from Arnold as its epigraph one of the clearest bridging statements between literary form and constitutional form: '[t]he precept given by a wise man, as well as a great critic, for the construction of poems, is equally true as to states'.⁶¹

Baldick's account of Arnold indeed arrived at a time when the aesthetic exemplar in English departments was struggling to fend off a real or imagined spectre of (French) Theory, and so to maintain a core discipline which in the long view had changed remarkably little from Arnold's civilizing mission. This ideal separation of constitutional culture from politics would embed a clerical class which was in practice still largely a product of inheritance and worked through 'individual moral constitutions'.⁶² As with Wordsworthian Romanticism, it was crucial for Arnold to aim his programme at the Philistines, since if the upper and middle classes could remain culturally fused, Britain would be strengthened as a counter-revolutionary power – the model described by the New Left in terms of England's pre-modern revolution.⁶³

Arnold's civility also helps lead along a line of universalist Anglophone cultural management travelling from Macauley's 1830s to the eventual shedding of any gesture towards popular determination altogether, as in J. C. Collins's *The Study of English Literature* (1891), for which English Literature is simply a duty to the state.⁶⁴ The nascent Oxford English school discussed from 1893, which largely concerned itself with an anecdotal canon of sensibilities, showed how easily the heroic-individual (Carlyle) and the instinctual-absolute (Arnold) could be combined in the late-Victorian understanding of disinterested examination. Ideal disinterestedness as amplified by the aesthetic idealism of Arnold would be a cornerstone of revived English in the twilight of high empire,⁶⁵ and clear the path for the mid-twentieth-century dominance of Practical Criticism as a new form of disinterestedness. (This phrase itself is nevertheless far from 'disinterested', having been used in Coleridge's *Biographia Literaria* to recuperate the nativist neoclassicism of Wordsworth.)⁶⁶

The 1850s–60s cultural turn exemplified by Arnold went together with an idea of an expanded 'Greater Britain', a global vindication of the

universal reach of a constitution proofed from insurgent shocks like the 1857 Indian Mutiny and the 1865 Morant Bay Rebellion. Mill's *On Liberty* (1859), reaching throughout the wider free-trading empire, encouraged those regions which were willing to come 'late' to a liberal-conservative franchise advantageous to a global Britain congruent with Anglophone rule.⁶⁷ Britain intuitively becomes the global-national form of a 'people'. So in *Essays on Reform* (1867), Dicey, James Bryce, Leslie Stephen, and Frederic Harrison call for a 'more national policy', using the term in an ethnocultural sense – presaging Dicey's crucial later idea of Britain's uniquely 'flexible constitution' able to incorporate new aspirational territory relative to a central meridian.⁶⁸ Charles Dilke's iconic travelogue-manifesto of the next year remains one of the most significant attempts to 'culture' the Anglophone empire in 'English' terms.⁶⁹

In Dilke's amplification of the informal constitution, even America, although lost to British government control, is nevertheless as important a part of the Anglosphere as is England itself, and more significantly is a transmitter of 'English' values to the new world.⁷⁰ About half of Dilke's long travelogue concerns an America which is still defined by an informal constitutional culture, 'the America of the law-abiding, mighty people who are imposing English institutions on the world'.⁷¹ The extension of a cultural franchise to the whole English-speaking world – as well as the world which is not yet English-speaking but could be if it made the effort – both unifies and underlines the need for centralized literacy control. In America, for example, the over-expansion of literacy can, according to Dilke, exacerbate racial as well as class tensions – in anticipation of which, of course, the British empire had already developed its own racial typology.⁷²

And for Dilke, Macauley's famous call to use English to civilize a sentinel class of managers in India can only ever go part-way towards solving that country's corruption. The difficulty of imposing English universally as cultural exemplar across this entire territory can be understood in terms of a lack of natural law, with the disciplined English exported to address this natural failure now candidly described as the language of truth:

It is not easy to see how this vital defect [of Indian corruption] can be amended, except by the slow process of raising up a native population that we can trust and put in office, and this is impossible unless we encourage and reward the study of the English tongue. The most needed of all social

reforms in India . . . could itself in no way be more easily brought about than by the familiarization of the Hindoos with English literature; and that greatest of all the curses in India, false-swearing in the courts, would undoubtedly be both directly and indirectly checked by the introduction of our language.⁷³

English language is even more directly equated with legitimate civility in John Seeley's comparable later account *The Expansion of England* (1883).⁷⁴ Seeley's book is as thoroughly 'culturalist' as is Dilke's, and argues for a federal empire – that is, where federation means the ability to absorb territory under a single continuant constitution.⁷⁵ This allows an ideal England – the nation as the disciplined language – to be exported through informal inclusion,⁷⁶ completing the idealization of, or the dis-placement of, territorial England – making the constitution 'almost boundless', and government able to cross national borders without rethinking its constitution.⁷⁷

So English, the language and the discipline, becomes necessary for Seeley for the indefinite retrospective adaptation of the constitution, and underwrites the way new territory can soak up excess population under an expanding set of informal laws, even allowing 'English' people to emigrate without losing their nationality.⁷⁸ (And yet, perhaps unsurprisingly, this is not an even spread: the furthestmost of the 'Greater' territories have more need of English Literature since they are 'wanting in organic unity and life', and have to wait for literary authority to arrive from the centre – Casanova's 'tempo'.)⁷⁹ Tracing early ideas of a Greater Britain back to James I's (union-of-crowns, pre-Civil War) export of a 'living' vitality,⁸⁰ Seeley's sovereign-in-parliament stands for a 'great homogeneous people' united 'in a very special way', that is, by the naturally improving literary exemplars which can cover the Anglosphere.⁸¹ Overlapping with A. V. Dicey's constitutional commentary, Seeley's constitutional spread is seen as a duty, not an imposition: the 'English empire' differs from continental European empires in that it makes no claim to *own* its colonies (that is, through prescriptive rights), but rather allows its natural liberty to extend, as by a universal law.

By the time of *The Growth of British Policy* (1895), framing his account with the settlement of Revolutionary England's turbulence in the whig settlement of 1688,⁸² Seeley is perceiving the victory of a permanent and 'fixed condition', a 'timeless' progressive conservatism of the kind desired

both by anti-Jacobin Romantics and Victorian jurists. Cultural 'England' is now certainly an ethno-linguistic aggregate and, through its metaphysical and cultural reach, a natural world leader, so that '[i]t is no exaggeration to say that in power the English [speaking] countries would be more than a match for the remaining nations of the world, whom in the intelligence of their people and the extent and wealth of their dominions they already considerably surpass'.⁸³ The Anglophone ideal – which Seeley hypothesizes, somewhat bizarrely, in terms of a battle which pits France and Spain against England and the New World – rises with empire, but leaves behind it cultural global sovereignty forms reaching long into the twentieth-century welfare era. Indeed, we might note how close Seeley's English Atlantic is to Orwell's Oceania: the Anglosphere is circumscribed by a positivist, globalizing sweep across the long period from the 1680s to the 1940s, becoming the Ingsoc in which is reincarnated the 'totalized' informal whig consensus.

Seeley's combination of flexibility and permanence then also shows how the Hanoverian and financially rationalizing unification of 1688 allowed for the possibility of perpetual revolution without change, an ever-accelerating stasis, the continuant as a progressive ideal. Seeley is quite explicit about governance as a literary-linguistic 'restoration' able to 'nationalize' the Anglosphere in perpetuity:⁸⁴ William III's post-1688 resistance to France, clearing the path for union and empire, is seen as settling 'our troubles . . . [which had been] closely involved with the question of constitutional liberty'.⁸⁵ And this use of cultural franchise can be read in that most canonical imperial commentator on the British constitution (and whose commentaries have often been seen for the anti-formal settlement as the constitution), A. V. Dicey. Dicey's determination to press the informality of freedom in empire should be seen next to the apparently more cultural-anthropological work of Dilke and Seeley, while owing something to the Romantic nation of Wordsworth and Coleridge. A key is the way for Dicey the *bête noire* of the Irish Home Rule movement threatened disruption of the whole Greater British tradition, especially from the 1880s – but in how he rejects, contra Seeley, even a federal solution, leaving the demand for the strict and even spread of parliamentary sovereignty across all regions of the empire.⁸⁶

Dicey's case for centralized and universalized governance is set out in his 1886 riposte to the Home Rule proposals of the time, a polemic for which Irish access to English constitution is a right rather than an imposition – but

a right which is compulsory and crucial.⁸⁷ For Dicey, Irish Home Rule is not only – or even primarily – a question for the Irish, but a question for every region of empire, since any change in the spread of sovereignty would create an imbalance of power destabilizing the whole (and this is an argument which clearly retains significance in the debates surrounding the rights of jurisdiction over the 2014 Scottish independence referendum).⁸⁸ Dicey's account of Home Rule then concentrates on the evils of nationality portrayed as belligerent (or active) ethnicity, while a rigorous informality, in this case reliance on precedent, seems to give 'British nationality' a transparent status – Britain the nation is not really national, a status which it retains till the present day.⁸⁹ The demonization of the national in ethnic terms would also become quite familiar during the era of devolution – as would Diceyan comments about Britain's peripheries being lucky to be propped up by the universal. In a way that speaks to the way we now see the 1977 West Lothian Question (why should Scottish MPs be allowed to vote in two parliaments but English MPs in only one?), Dicey's concern is that parliamentary sovereignty should remain undisturbed throughout the whole territory, since any specificity of place could signal a local 'dictatorship', which he tellingly likens to the Paris mob.⁹⁰ Crucially, universalization demands centralization – and ironically for a constitution moved forward by 'train crashes', a strong and 'wise driver' is needed to maintain parliamentary authority, keeping it universal and blind to any specific place.⁹¹

Centrally for textual criticism of constitution, since for Diceyan commentary legislation can never proceed from principles concretized in any text, it relies on the admission that authority can only exist as precedent and interpretation: that is, interpretation is representation.⁹² Interpretation becomes a kind of shadow-text where the original does not exist, but never itself becomes textual, or active. Constitutional interpretation is able to bind judgement along informal lines which seem intuitive.⁹³ And criticism as constitution demands a hermeneutic 'state culture' to oversee individual cases, a power which hangs over common law like Arnoldian aesthetics hangs over English. (A similar line is pressed from the same year by Walter Bagehot, tutor to many late-Victorian jurists, who is perhaps even more insistent on constitutional informality.)⁹⁴

In Dicey then the Irish question, a scourge on the culture of the mainland but necessary to the integrity of governance, demonstrates why the British constitution is bound to maintain representation as ahistorical and resistant

to codification. Ireland is the greatest of many threats to the evenness of the informal constitution:

Home Rule, to put this matter in its strongest form, means, it may be said, the application to Ireland of the very principle on which the English constitution rests – that a people must be ruled in accordance with their own permanent ideas of right and justice, and that unless this be done, law, because it commands no loyalty, ensures no obedience. The whole history of the connection between the two islands which make up the United Kingdom is a warning of the wretchedness, the calamities, the wickedness and the ruin which follow upon the attempt to violate this fundamental principle not only of popular, but of all good and just government.⁹⁵

These terms of permanence have by this point become a recurrent motif, signalling a new continuity of revolutionary performance which can be linked to both Burke and Orwell.⁹⁶ In Diceyan commentary, no Parnellian (or Jacobin) assertion of local power can compete with what is now, somewhat duplicitously, called a ‘popular’ desire for permanence, a settled wish which paradoxically occupies a position beyond experience.⁹⁷ Dicey’s best-known commentary, *Introduction to the Study of the Law of the Constitution* (1885), thus begins by reinvoking the Burkean-Coleridgian veneration of the intangible beyond literacy,⁹⁸ reminding us in Burkean mode that the constitution has no historical origin,⁹⁹ and that the primary duty of all laws is to ensure the integrity of parliament as a permanent precedent – a more aggressive form of the whiggish legal positivism/negative liberty knot which insists that what has already happened must have been what was most fitting.¹⁰⁰ The creation of custom is now described as ‘constitutional morality’,¹⁰¹ and it exists in a circular, totalizing sense ‘in a state the will of which is ultimately obeyed by the citizens of the state’.¹⁰² For Dicey as for Coleridge, the idea of the state enters the mind divinely before isolated contemplation gives it form, and this idea comes to us via an unalienated nature – so that although the summoning of Parliament is not systematic, it is as inevitable as night and day.¹⁰³

Dicey also contrasts, to an almost obsessive degree, Britain’s informal, natural, uncoded, or *flexible* constitution, with France’s *rigid* constitution. For the French constitution, ‘public sentiment’ means nothing more than

‘political considerations’,¹⁰⁴ whereas the British constitution is guided by higher moral forces – and is never, by implication, political. That is, the popular is to be *contrasted* with the political – but the popular is also (metaphysically) bound by a coherent will which it must nevertheless be imagined to form. And for Dicey the fact that the French constitution is merely ‘political’ means that it is not even properly legal – a revealing definition of legality as beyond participation.¹⁰⁵ So French *droit administratif* (usually glossed as ‘martial law’) is then seen as based on coercion, in an echo of the Burkean distinction which sees the French constitution as abrogating the present through text, while the English (British) constitution is too civilized to have any such ‘violent’ equivalent.¹⁰⁶ This distinction, of course, overlooks the British counter-terror of the 1790s, the imperial militia established in Ireland and throughout empire, the suspensions of habeas corpus on the mainland in 1797 and 1817, the countless other emergency powers which the parliament deemed necessary to empire – right through to the surveillance state of the 2000s – and a litany of Irish *droits administratifs* taking in Dicey’s own coup of 1914.¹⁰⁷ But where federation might bring the danger of a ‘rigid’, or textual, constitution, an unwritten and centralized but informal settlement can be infinitely adapted, and so infinitely open to bureaucratic elites, enabling the totalized state through a subtler, but ultimately more powerful, route. And yet, on a wave of imperial realist moralism, the Diceyan state was seen as a natural good since it was *stable* in accordance with the interpolated wishes of the people – it was in Bagehot’s terms ‘impressive’ while remaining protective of its ‘efficient secret’, maintaining Britain’s place at the imperial meridian.¹⁰⁸

Much becomes clear about modern Britain as a ‘control society’ if we see how this most canonical constitutional commentary demonstrates that legal positivism, perceived as a necessary idealization of ‘really existing law’, has to *seem* less rule-bound since its principles are informal – while in fact it demands more self-disciplining, making it in practice more bureaucratic.¹⁰⁹ And the anti-Jacobin avoidance of proclamations of rights comes to correspond, from the comfort of high Victorian realism, to the extrapolated assumption that the English people are naturally conservative and will never feel the desire to make any such proclamation.¹¹⁰ (The assumption, of course, remains strong today: England is still often colloquially presented as instinctually conservative, though almost always without asking how we could possibly know how under any properly national conception of franchise, modern England would

follow the conservative path which is casually assumed for it by relying on *British* measures of identity, especially UK voting patterns.¹¹¹ Dicey argues that this kind of conservative trust has allowed the British freedom of the press to lead Europe¹¹² – but although the press is rarely overtly censored,¹¹³ ‘public opinion’ already had a tremendously well-ingrained ideological role, informally regulating opinion within a tradition of constitutional realism.

As a coda to, and an instructive description of, the long victory of the whig constitution, Dicey’s *Lectures on the Relation Between Law and Public Opinion* (1905) describes three phases of constitutional thought evolving over the high era of imperial English Literature: first, there was reaction to the French Revolution, followed by the last days of Old Toryism, both phases allowing little reform, and finally, a modernized version of Benthamism, where the book’s sympathies clearly lie, but which is also potentially prone to a misguided collectivism.¹¹⁴ The long ‘legislative stagnation’ after 1789 was necessary in the face of formal threat, and the reactionary consolidation of the 1800s and 1810s was an understandable result (and one which Matthew Arnold would describe as a numbing of curiosity, triggering the need for a reinvigorated middle class).

The neo-Benthamite era on the contrary allowed for an updating of progressive conservatism to the conditions of high empire,¹¹⁵ and a further finessing of ‘constitutional morality’ into ‘legislative public opinion’, helping to incorporate and neutralize the dangers of a widening franchise.¹¹⁶ For Dicey Benthamite reform then proved that the ‘omnipotence of the Parliament’ could work through liberal individualism,¹¹⁷ so that an individualist ‘character of permanence’ could come naturally (and meritocratically) to the fore.¹¹⁸ The mutualistic relationship between individual and state was seen for Dicey in the People’s Charter of 1838, and, more iconically, in the Great Exhibition of 1851 (which we might nevertheless now see as demonstrating Britain’s need to keep *performing* itself in order to avoid having to define itself).¹¹⁹ This relationship was continued by classic liberalism (*On Liberty* is in the frame here),¹²⁰ and Bentham and Mill together foresee a successful defence of the middle class against ‘the tyranny of the majority’,¹²¹ making the state more open to the ‘spirit of the age’ – that is, to the current incarnation of permanence – which would in turn also make it stronger and able to absorb more powers.¹²²

While claiming a form of public opinion, this thinking is of course bound to the growth needs of empire, based on a whiggish and alienating

thinking of the Burkean formulation of the un-systematic system: '[p]ublic opinion . . . is, after all, a mere abstraction; it is not a power which has any independent existence; it is simply a general term for the beliefs held by a number of individual human beings'.¹²³ Like that of Burke, Dicey's liberty is therefore both highly abstract – 'a general term' – and based on the evidence of working law, the pragmatic combination of positivism and metaphysics basking in English Literature's long Romantic tail.¹²⁴ And with one eye on growing imperial rivalries, Dicey has by now become more forthright about legal positivism: it is quite proper that rather than judgements provoking legal changes, legal changes have already happened by the time they become constitutional – the writing of law must take place in Burke's impossible time of events which happen without ever being experienced, the temporality which came to ascendancy during the Napoleonic Wars.¹²⁵ And English law, drawing on a 'whole body of ideas and beliefs',¹²⁶ is now able to outmanoeuvre any active threats to constitutional informality, via legislative judgement, which is quite clearly circular – '[j]udicial legislation aims rather at serving the certainty than at amending the deficiencies of the law'.¹²⁷ In this positivist or realist circularity, a metaphysics recalling the Burkean Coleridge,¹²⁸ law is serviced by legislation whose aim is in turn to approximate an ideal of law – a closed circuit describing the working of the British constitution as well as the aim of the influential 'disinterested' English criticism which comes to prominence in the 1910s–20s, and which searches for a literary form already established before the act of reading.

Diceyan commentary of course would never solve the problem of Home Rule, and nation-based criticism of constitutional culture would slowly grow, especially from the mid-twentieth century, in the self-determination movement (at the start often party-nationalist) in Scotland. Thus the stress, in Scottish critiques all the way from the 1950s to Iain McLean's Dicey-targeted one of 2010, on the separate principles of the Scottish legal system as outlined by James Dalrymple, First Viscount of Stair, as against the prevailing Diceyan universalism and the assumed sovereignty of parliament.¹²⁹ In retrospect in Scotland, as far deeply as this may have been buried during high empire, the sovereignty of parliament assumed by Blackstone, Burke, Bagehot, and Dicey was always a matter of *cultural* debate (and a post-2010 confusion over the right to legislate the 2014 referendum revived difficult questions over this incommensurability of sovereignties). McLean reminds us that the 1706–7 Acts of Union required a new formulation by both signatories, and

so the Acts informally *instated* parliamentary sovereignty rather than, as constitutional culture would later imply, *restoring* it.¹³⁰

For McLean then, only between Locke's influence on unification and Blackstone's presence in the mid-eighteenth century did sovereignty in Britain slide from the popular to the parliamentary, and allow for the timeless and universal tropes relied on by the imperial commentators of whom Dicey stands at the head.¹³¹ As McLean points out, the 'timeless' tradition has never provided an adequate explanation for the events of 1660 and 1688, when a monarch was *invited* to become head of state, creating the revolutionary precedent which led to Union.¹³² The Union – a continuant 'empty present' in the terms I have described – then relies for McLean on an ongoing usurping of sovereignty by those apparently only observing it – again recalling how Dicey's Ulster coup was unlawful by any serious use of his own terms.¹³³ Under the kind of textual criticism gestured towards by the tradition of constitutional scepticism which leads to McLean, Dicey's Ulster coup does exactly what he would have wanted to avoid – it makes explicit the way that parliamentary sovereignty is always *ex post facto* constituting itself retrospectively as if it had always already existed.¹³⁴ Diceyan sovereignty demands infinite powers for the executive unless the executive has previously bound itself, but this also admits that the principle of parliamentary sovereignty 'in perpetuity' is even more totalizing than the constitutional systems it claims to supplant.¹³⁵ Laws become true just by reiteration, just as the English literary canon gains value by the exemplary force of individual authors.¹³⁶ This mutually reinforcing relationship of normative forces then calls for a reading which points up the constitutional *action* hidden under the sign of continuity.¹³⁷

McLean's critique was pointedly timed, coming between the unwinding of devolution and the independence referendum mandate in 2010. But it also followed, as had his previous critiques, a long buildup of questions over sovereignty pressed by Scots lawyers like Neil MacCormick from the 1950s onwards (prominently, by Neil Walker and Hector McQueen), the early reaches of which might be compared to the work of constitutional sceptics in the New Left.¹³⁸ Both these threads stressed how in Britain a single conception of sovereignty had worked to culturally absorb another more popular-tinged lineage (as well as to maintain an inherited or appointed upper chamber).¹³⁹ Both threads also pointed out that despite its claims to balance, parliamentary sovereignty in its Hanoverian-Burkean form tends towards a *de facto* unicameral authority: opposition to constitutional

overhaul is a primary rationale of the parliamentary settlement, while the performance of parliamentary participation is made almost compulsory, a combination of totalizing elements later known as ‘elective dictatorship’.¹⁴⁰ (Although this term was popularized in 1978 by the Tory Lord Hailsham, the neo-Burkean Conservative governments which soon followed his diagnosis would further strengthen parliamentary sovereignty,¹⁴¹ and would revive the imperial mix of economic liberalism and social conservatism – with unforeseen consequences, since it would underscore a condition of *democratic deficit*, or antagonism between civic nation and state. Moreover the appointment of life peers made the upper house less partisan – less ‘naturally Tory’ – and more a site of aspiration, patronage, and reward for a unified political class.)¹⁴²

Crucially for McLean, popular sovereignty in fact has a much longer history than parliamentary sovereignty, one readable as far back as the seventeenth century in England and possibly the fourteenth in Scotland – and was only in the eighteenth overwhelmed by the (cultural) weight of assumption brought by the unified Anglo-British constitution.¹⁴³ So if the constitution does indeed exist as interpretation of a spectral text, always anti-formal and only fleetingly ‘visible’ as commentary, an aim of a constitution-sceptical literary criticism would be to point up where the grain of the active shows through this apparently seamless flow. Such a criticism would recognize that the state and its interpolated culture can never admit that popular sovereignty is unconstitutional, because to do so would be to reveal a moment of historical change – thus the need for the adaptive definitions of parliamentary sovereignty as reflecting the people’s will, as constitutional morality, as a natural conservatism.¹⁴⁴ The ideal continuity which would struggle to survive the contraction of empire was questioned by constitutional critiques from the 1950s onwards, most prominent among which was that of the early MacCormick, acknowledged here by McLean as a mentor.¹⁴⁵

After various modernizations, the Diceyan embedding would only finally begin to lose its grip in these post-imperial times, prodded by the revelation of British economic vulnerability.¹⁴⁶ Michael Keating dates the rupture of a general loss of belief in a unified British sovereignty to questions raised about the centralization of state-capitalism in the 1970s, before which a beneficent whig historiography was still largely assumed.¹⁴⁷ And making a point which is more significant to sovereignty debate than any number of ‘self-identifying’ Moreno surveys, Keating reminds us that in practice thinking about civil

society has tended to become concentrated in that area of the constitutional jurisdiction with some grounding, whether cultural or formally legal, in popular sovereignty, and increasingly associated with the idea of a shared public – Scotland.¹⁴⁸ The extent to which popular sovereignty is a Scottish ‘myth’ is not the point here, at least not as much as the cultural pressure for a popular participation in sovereignty and its post-Diceyan import. Given the rigorous informality of the British constitution, it is unsurprising that Scottish scepticism over Diceyan authority during the period of democratic deficit was so largely undertaken through literary means: the 1980s–90s cultural renaissance is only misleadingly explained as the global export of five or six writers, or the question of whether these writers personally hold nationalist positions – far less the canard of Edinburgh’s rise to global prominence as UNESCO City of Literature in 2004 (for a sense of perspective on this, 2012’s UNESCO City of Literature was Norwich).

Much more serious is the constitutional scepticism directed against Diceyan norms to suggest that national representation would include a defined body of participants. For Keating as for McLean and others, recent questions of national self-determination are to be traced back to 1880s–1920s arguments over Irish Home Rule in terms of their disturbance of the integrity of the closed constitution,¹⁴⁹ often historicized in terms of the epochal shock of the First World War. As a source of trauma and of the realization of ideological disjunction between ideal space and territorial place, the First World War was certainly a shibboleth – but so also, as the integrity of competing empires ran into trouble, other constitutionally foundational modes appeared to describe the modernization and reinvention of English Literature as a ‘national’ discipline during the 1910s and 1920s.