A. V. Dicey at the Harvard Law School, 1898: A study in the Anglo-American legal community

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A. V. Dicey at the Harvard Law School, 1898: A Study in the Anglo-American Legal Community

Richard A. Cosgrove

Perhaps the most famous lectures ever delivered by a foreign visitor to New England were those by Sigmund Freud in 1909 at Clark University. The history of psychoanalysis in America took a decisive turn and the visit shaped the reception of Freudian doctrine and the course of professional training for years to come. A decade prior to the Clark Conference, in 1898, another series of lectures by a distinguished foreigner exercised substantial influence over the intellectual development of New England, if not the United States. Albert Venn Dicey gave his lectures on Law and Opinion in England in the Nineteenth Century in the Harvard Law School at a time when his fame in the Anglo-American legal world stood unsurpassed. If these lectures did not possess the permanent significance of Freud's, their immediate impact was greater even than the more celebrated Clark lectures.

At the time of his visit to Harvard, Dicey was Vinerian Professor of English Law at Oxford, a post he had filled since election in 1882.

* The author is grateful to librarians at the British Museum and at Cornell, Glasgow, Harvard, and Oxford Universities for permission to consult and quote from manuscript collections in their custody. The locations of collections frequently cited below are as follows:
  - Bryce Papers: Bodleian Library, Oxford University
  - Eliot Papers: Harvard University Archives
  - Norton Papers: by permission of the Manuscript Department, Houghton Library, Harvard University
  - Holmes Papers: by permission of the Manuscript Department, Harvard Law School Library

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Dicey had restored the Vinerian Chair, after a long period of decline, to an eminence commensurate with its first incumbent, Sir William Blackstone. On his only previous visit to the United States, in 1879, Dicey, then a young barrister, had made the acquaintance of such eminent Harvard figures as Oliver Wendell Holmes, Jr., Charles William Eliot, and Charles Eliot Norton. Friendship with these luminaries of the Harvard community flourished by correspondence on both a professional and personal level, and visits to Dicey became mandatory on any journey to England by his American friends.

By 1898 Dicey had already produced two of the three works which established his academic reputation. After assuming the Vinerian Professorship, Dicey had published in 1885 his Introduction to the Study of the Law of the Constitution which insured his standing as a legal scholar and which has considerable claim to being the most influential volume on constitutional law written in Victorian England. In 1896 his massive treatise on Conflict of Laws had earned Dicey a prominent place in this new and rapidly developing branch of English law. In addition to these professional credentials, the final circumstance which made it possible for Dicey to undertake the lectures was the comparative lull in the Irish Home Rule question, a political issue in which Dicey had taken a prominent part by polemics on behalf of the Unionist cause.

President Eliot of Harvard first broached the subject of a lecture series to Dicey in the fall of 1897. Dicey did not accept immediately, for he was not sure he could obtain the necessary leave from Oxford. By February 1898 minor difficulties had evaporated and Dicey accepted the formal invitation extended by Eliot the previous month. Dicey started his preparations in earnest and in June he inquired of Holmes whether Harvard possessed the English Law Reports, the in-

3 Dicey to Holmes, 22 July 1897, Holmes Papers. After the amenities Dicey enlisted Holmes’s aid in getting maximum publicity for his recently published book on the Law of Donzell.
4 Law of the Constitution was influential in the sense that Dicey was cited by the courts far more often than Bagehot or others who are perhaps read more at the present.
5 Dicey to James Bryce, 24 November 1897, Bryce Papers.
6 The invitation from Eliot to Dicey was dated 7 January 1898; Dicey replied on 7 February 1898, Eliot Papers.
dispensable tool for legal research. Upon arrival he found to his surprise and delight that the resources for legal studies at the Law School Library far outstripped those in Oxford or indeed any library in England.

Later in June Dicey revealed a fact about the genesis of the lectures which has hitherto escaped both critics and admirers of the later book. Though Dicey had written occasional pieces on law and public opinion, the topic of the Harvard series, “Development of English Law in the Nineteenth Century in Connection with the Course of Public Opinion,” was not of his own choosing, but Eliot had suggested it to him. Since 1896 Dicey had contemplated a book on the more specific topic of the development of English law in the nineteenth century but seized upon Eliot’s suggestion at once and this accounted for the haste in which the lectures originated. The long period of seven years between the lectures and their publication stemmed from this circumstance; it is not too much to say that Dicey composed and delivered the lectures, then spent the intervening years in a search for the evidence to support his arguments.

Dicey sailed for the United States in early September 1898 and, after an uneventful voyage, landed at New York on 20 September. There he was the guest of another old friend, E. L. Godkin, editor of The Nation. After a brief stay in New York Dicey moved on to Stockbridge for a short vacation before settling in Cambridge. While at Stockbridge Dicey visited other American friends, including New York Bar leader Joseph Choate, and enjoyed a measure of respite prior to Harvard: “Interviewers have left me entirely alone, which though not particularly flattering to one’s vanity contributes to one’s comfort.” This peace at Stockbridge contrasted sharply with the hectic pace Dicey faced in the next two months.

The lectures commenced at the Harvard Law School in early October. Though already a recognized authority on legal and constitutional matters, Dicey worried about his reception. He believed his theme

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7 Dicey to Holmes, 2 June 1898, Holmes Papers.
8 Dicey did not publish his book until 1905 and then as Lectures on the Relation Between Law and Public Opinion in England during the Nineteenth Century.
9 Dicey to Eliot, 24 June 1898, Eliot Papers.
10 Dicey to Eliot, 20 September 1898, Eliot Papers.
11 Dicey to Bryce, 23 September 1898, Bryce Papers.
12 On 10 October 1898, Dicey received the distinction of becoming only the second foreigner to be appointed a Lecturer in the Law School. See Charles Warren,
of the influence of public opinion upon the course of legislation interesting but doubted his ability to convey its intrinsic merits. Dicey need not have worried, for the next six weeks he lectured to enthusiastic audiences averaging six hundred members of the University student body and faculty.

So well did the initial lectures go that when he met Harvard professor A. Lawrence Lowell, whose works in political science he already admired, arrangements were made for Dicey to present an additional set of lectures at the Lowell Institute. This shorter term of lectures, on comparative constitutions, proceeded concurrently with the talks Dicey delivered at Harvard. Dicey enjoyed his visits to the Lowell Institute but admitted that the audience at Harvard was more discerning while the Lowell audience was polite but basically comprehending.

Throughout October he found himself the focus of a social whirlwind as his lectures attracted much critical acclaim. After entertaining Dicey as a house guest, Charles Eliot Norton wrote of his mental vigor and animation, his solidity of judgment, and his active intellectual interests. Dicey, meanwhile, renewed friendships with such eminent Harvard law professors as James Barr Ames, C. C. Langdell, and John Chipman Gray. Between his lecturing and a seemingly endless succession of visits to old and new friends, Dicey maintained a constant pace of professional and social obligations.

At the end of October Dicey received another distinction when he journeyed to Princeton University to receive an honorary doctorate and in return promised two lectures before his departure to England. Back in Cambridge, Dicey attended a meeting of the Choate chapter, a club of Harvard law students to whom he gave an impromptu address.


15 Dicey to Goldwin Smith, 6 October 1898, Goldwin Smith Papers, Cornell University Library.


16 Dicey to T. W. Higginson, 13 October 1898, Higginson Papers, Houghton Library, Harvard University.

17 Dicey to Mrs. James Bryce, 24 November 1898, Bryce Papers.


19 Dicey to Mrs. Dicey, 18 October 1898, in Rait, *Memorials*, p. 152.
comparing legal education at Harvard and Oxford. Early in November, a dinner at the Tavern Club afforded Dicey the opportunity to comment upon the Anglo-Americans’ habit of identifying their success with the decrees of history. He cautioned his audience that law should not be confused with legalism and that the practice of justice was more essential than its repeated proclamation.19

Dicey finished his lectures at Harvard in the middle of November to renewed acclaim, especially from Eliot, who, Dicey knew, wanted only the best for his institution and gave his praise sparingly. For the next month Dicey followed an itinerary which included a trip to Niagara Falls, a journey to his former Oxford professor, Goldwin Smith, then in Toronto, and a visit to Washington where he was a guest of Supreme Court Justice Gray. After this Dicey delivered his lectures at Princeton where he heard “one first-rate lecture from Woodrow Wilson,”20 already known to Dicey as “a really original writer on constitutional theories.”21 On 8 December, after a final lecture at Columbia University and another visit with Godkin in New York, he embarked for England, having spent some eleven weeks in the United States and Canada. Norton summarized the impact of Dicey’s stay:

If his visit to America was good for him, it was far more good for us. He brought us what we lacked. His presence in Cambridge qualified, to its great advantage, our whole intellectual atmosphere. He did not know how much good he was doing, but a great part of the pleasure which he received was but a reflection of the service which he was rendering.22

Apart from the lectures, which now form the departure point of the scholarly controversy among historians of Victorian England about the “19th Century Revolution in Government,” what was the significance of this visit to New England? The strong impression made on Dicey led him, both at the time and later in life, to leave a portrait of Harvard University in general and the Law School in particular which testified eloquently to the University’s position in the educational life of the United States. Most significant of all was the role of these lectures as a catalyst to the rapidly developing Anglo-American legal community.

19 Dicey to Mrs. Dicey, 8 November 1898, in Rait, Memorials, p. 162.
20 Dicey to Eliot, 5 December 1898, Eliot Papers.
21 Dicey to Mrs. Dicey, 1 December 1898, in Rait, Memorials, p. 171.
After he left Harvard, Dicey reported the happy recollections he carried away:

The three impressions of Harvard which I believe will remain with me as long as memory serves me are these. The extreme friendliness of everyone with whom I have come into contact . . . Then the success & prosperity of your Law School is to me a very striking fact, not an unexpected fact . . . Lastly the whole life at Harvard seems to me almost ideal. I never came across a place so completely dedicated to happy & successful work.24

To William James he added:

I feel more and more sure that if the other Universities at all resemble Harvard, they form, as Godkin always re-iterates, the brightest & most hopeful part of American life. Happy and useful work seems to flourish at Harvard as I have never seen it flourish elsewhere & surely this is the best condition of things that the world admits of.28

Dicey recognized that he had seen Harvard only in the best light but the happy impression of the University remained all the same. The life at Harvard was in some ways almost ideal, "though, of course, one must always remember that a stranger does not probably see the seamy sides of it."29

His reception at Harvard had clearly delighted Dicey: "The whole visit has been a great success. My lectures have gone off as well as I could wish and a great deal better than I could expect."30 Dicey confessed how touched he was at the sight of the elderly Langdell faithfully attending each lecture and sending a congratulatory note upon their completion. In fact, things had gone so well that he feared a third visit to the United States might ruin the good impressions he retained.31

Once the lectures were ended, Dicey had more time to ponder their eventual publication. He confided to Eliot his hopes of publishing his work while again thanking his host for the "excessively good time" he enjoyed at Harvard.32 When referring to his talks at Princeton, Dicey mentioned that "the practical pre-eminence of Harvard is, I find, in effect, acknowledged on all sides."33 Perhaps even more im-

24 Dicey to Eliot, 18 November 1898, Eliot Papers.
28 Dicey to William James, 20 November 1898, James Papers, Houghton Library, Harvard University.
28 Dicey to Bryce, 14 November 1898, Bryce Papers.
26 Dicey to Mrs. Bryce, 24 November 1898, Bryce Papers.
27 Dicey to Bryce, 24 November 1898, Bryce Papers.
26 Dicey to Eliot, 5 December 1898, Eliot Papers.
28 Dicey to Eliot, 5 December 1898, Eliot Papers.
important in this regard, these memories did not fade and Dicey sang the praises of Harvard for years after.

Dicey's own career at Oxford, notable though it was, had not been without problems. Upon arrival in 1882 he had tried to reform the law curriculum at Oxford though with indifferent success. The visit to Harvard renewed his zeal for the improvement of his own University. "Harvard will always remain in my mind as in its spirit almost an ideal University," he wrote to Norton after returning to Oxford, "I do not wonder that in America you should wish for the antiquity and beauty of Oxford & Cambridge. But from deficiencies of my own I have always been less affected by the charms of our Universities than I suppose I ought to have been & if you lived here you would I fancy feel with me that our historical beauties were paid for by an almost unbearable number of historical defects." 97 On the other hand, Harvard contained "such an unlimited amount of life & hope" due to freedom from aristocratic control and the dead hand of tradition.98

Later, while admitting his bias in favor of Harvard, Dicey wrote:

I am more & more assured that Harvard has merits which it is very hard to find elsewhere, & which in any case are of a kind which I personally should always rate higher than the merits real though they are of our English Universities, & especially of Oxford. The truth is with its medievalism & the consequences thereof I have less sympathy than I suppose that as a matter of sound judgment they deserve.99

On the most elementary level Harvard compared favorably with the best of English education. Dicey's admiration for Harvard was not exhausted by this general estimate of its merits.

The students Dicey encountered at Harvard had deeply impressed him as well. One year after the Harvard lectures Dicey contrasted the lively audience in Fogg Hall with the apathetic twenty gentlemen who had heard his lecture that day in Oxford.100 The immediate result of the Harvard visit was Dicey's success in opening the Oxford B.C.L. degree to outsiders. Previously this degree was available only to those who already held an Oxford B.A. Dicey had recruited James Bryce, himself a sometime professor of law at Oxford, to his plan for altering the University statutes by forecasting how much the change would

98 Dicey to Norton, 29 January 1899, Norton Papers.
99 Dicey to Norton, 19 March 1901, Norton Papers.
100 Dicey to Eliot, 17 October 1899, Eliot Papers.
improve the teaching of law at Oxford. 34 For once in his Oxford career, Dicey encountered no obstacles and he soon informed Norton of his success. 35 Dicey asserted that ten American students of the calibre he had found at Harvard Law School would transform Oxford legal training. 36 Soon after the establishment of the Rhodes Scholarships Dicey ensured that these new visitors should also be eligible for the B.C.L. curriculum. 37 These efforts by Dicey opened Oxford University to law students from America and have done him credit ever since.

Of all that Dicey admired, the Law School represented the very best Harvard offered. The clearest expression of this attitude came in a letter to Norton:

I wonder if you all know at Harvard how admirable your law teaching is compared with anything we have to show in England. I don't know that I ever heard anything so good of its kind as Amos' lectures. But after all though I don't think the Harvard Professorate would quite agree with me, the teachers and the pupils they have created are the real glory of the place & worth twice as much as the system — good as in many respects it is. 38

To this he later added:

I cannot find it in my heart to blame the Harvard Law School greatly if they are a good deal stuck up. The Institution impressed me more than anything I saw in America. Surely the great test of an Institution is the answer to the question — is it alive? Where there is life you can pardon and I never saw anything more vigorously alive than your Law School. 39

Nor, indeed, was this great admiration unique to Dicey: "I am deliberately of opinion — and I believe Pollock fully agrees with me — that your Law School is by far the greatest Institution in existence for the teaching of English Law. The thought of having lectured there gives me constant pleasure." 40 Dicey desired a regular interchange of the Oxford and Harvard law faculties in the belief each would

34 Dicey to Bryce, 18 May 1899, Bryce Papers.
35 Dicey to Norton, 20 March 1900, Norton Papers.
36 Dicey to Eliot, 21 September 1900, Eliot Papers.
37 Dicey to Eliot, 18 October 1904, Eliot Papers.
38 Dicey to Norton, 29 January 1899, Norton Papers.
40 Dicey to Eliot, 7 April 1904, Eliot Papers. Sir Frederick Pollock was sometime Corpus Professor of Jurisprudence at Oxford University and at the time editor of the Law Quarterly Review.
benefit from the best the other had to offer." This hope was never realized except sporadically, but the admiration implicit in Dicey's scheme was clear.

What attracted Dicey most about the instruction at Harvard Law School was the catechetical style, an innovation of which Dicey approved fully. The belief that English law could be learned only in the Inns of Court, Dicey found outrageous. He had helped pioneer the professorial method of using lectures to expound legal principles at Oxford and believed firmly in its utility. Still, he was conscious of its shortcomings: "If the choice necessarily lay between our own plan of rather ineffective set lectures & the Harvard scheme of question and answer, I would gladly substitute your method for ours." The ideal plan of law teaching involved a combination of both lecture and question and answer approaches; this amalgamation constituted the "perfection of teaching" to which he aspired and whose realization was best accomplished at Harvard.

Upon his return to England, Dicey publicized his opinions in a laudatory article in the *Contemporary Review*. To his English audience Dicey emphasized the professional nature of legal training at Harvard and the role that the professors played in imparting scientific principles to the pupils. He categorically termed Harvard the superior of its competitors in America. The conclusion Dicey drew was the necessity to close the gap at Oxford between speculative and practical legal training after the Harvard fashion. A professional school at Oxford should combine practical training as in the Inns of Court with the Oxford tradition of theoretical jurisprudence. The Harvard Law School was a living example of how this goal could be attained. A decade later Dicey noted some improvement at Oxford but standards still fell below his expectations. His praise for the Harvard Law School and its methods was still unqualified.

This unabashed admiration by Dicey for the Law School heralded

41 Dicey to Norton, 29 January 1899, Norton Papers.
42 Dicey to Norton, 19 January 1899, Norton Papers.
43 Dicey to Norton, 29 January 1899, Norton Papers.
the establishment of its international reputation. Dicey’s lectures, it
should be emphasized, provided the medium through which Harvard’s
excellence in legal scholarship received international recognition. Har-
vard professors like Story, Kent, and Holmes had previously earned
reputations for themselves abroad but this commitment to scholarship
was now institutionalized in the entire faculty and, more important,
earned foreign acknowledgment.

The publication in 1905 of *Law and Opinion*, which Dicey dedi-
cated to Eliot in particular and the Harvard law faculty in general,
served as a permanent memorial to the visit. It would, Dicey wrote,
always remind him of Harvard and the “singularly happy visit” he had
enjoyed. When the book appeared Dicey instructed his publishers
“to work hard my American connection. I am more of a prophet there
than in England.” This opinion was not unfounded; as Joseph
Choate wrote to Dicey: “It was a great thing for the Harvard Law
School for you to come and lecture to them and in this enlarged and
final form the book is regarded here as of very great value.” The
bonds between Dicey and Harvard have no more fitting remembrance.

Dicey never forgot the visit to Harvard; in 1907 he wrote to Eliot
that his stay contained “some of the happiest times I can recollect.”
When Dicey informed Eliot he was soon to retire as Vincian Profes-
or, he regretted he could not have taught law at Harvard rather than at
Oxford. To the end of his life Dicey retained his affection for Har-
vard and especially the Law School. Six months before his death, at age
87, Dicey could still recall:

Hardly a year passes when about the 4th October I recollect my beginning
about that date in 1895 my first course of lectures at Harvard. It was not
quite so exciting a time as our visit in 1879, but it was a thoroughly good and
interesting time, and on the whole a more hopeful time to me as regards public

46 This achievement was, for the most part, ignored by Arthur E. Sutherland,
whose book detailed only the internal development of the Law School. See Arthur
E. Sutherland, *The Law at Harvard: A History of Ideas and Men*, 1817–1967 (Cam-
47 Dicey to Eliot, 25 October 1904, Eliot Papers; Dicey to Norton, 13 June 1905,
Norton Papers.
48 Dicey to Macmillan Company, 8 June 1905, Macmillan Company Papers,
British Museum Additional Manuscripts 59884.
49 Joseph Choate to Dicey, 3 July 1905, General Manuscripts 508(44), Glasgow
University Library.
50 Dicey to Eliot, 1 January 1907, Eliot Papers.
51 Dicey to Eliot, 12 November 1908, Eliot Papers.
life than any year that has followed. It was a great satisfaction for me to feel that in spite of some difficulties in making myself heard in the room where I lectured, the lectures . . . went off well and I think were appreciated by the audience. Legally too I was at the height of such fame as I have attained as a lawyer. The place taken by my Law of Constitution was admitted, and my sympathy with the Harvard Law School was very great.62

The enduring relationship of Dicey to Harvard symbolized the closer links, not only between Oxford and Harvard, but of Anglo-American legal scholarship in general. The existence and development of this phenomenon deserves extensive study, but here a number of its manifestations may be briefly noted. The foundation of the academic legal quarterlies, Law Quarterly Review and Harvard Law Review, demonstrated the common awareness on both sides of the Atlantic of the need for law journals of better quality. The links between Holmes and Pollock, already well known, serve as a model of the personal way in which this sense of community grew.63 As Dicey himself noted, many of the treatises used at Harvard were written by his Oxford colleagues, yet Oxford failed to equal the quality of legal education at Harvard.64 The Dicey lectures of 1898 sharpened the focus of the Oxford-Harvard legal axis; they provided the intellectual basis for continued development.

It was of course easy for mutual appreciation to grow, for each legal system traced its origin to the same cluster of ideas. The common legal heritage of each faculty made closer relations logical, especially in the context of pre-1914 ideas of the innate superiority of the “Anglo-Saxon” capacity for law, a concept Dicey often expressed.65 The convergence of law and history prior to World War I gave a heightened sense of unity to the Anglo-American legal community. This sympathy was both cause and result of Dicey’s lectures at Harvard.

62 Dicey to Bryce, 16 October 1911, Bryce Papers.
64 Dicey to Mrs. Dicey, 26 October 1898, in Rait, Memorials, p. 157.
65 For example, see Dicey to Norton, 19 March 1901, Norton Papers.
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JUDITH MILHOS, Assistant Professor of Theatre History and Dramatic Literature at the University of Iowa, was the co-author (with Professor Hume) of articles in the October 1974 and January 1977 issues of the HARVARD LIBRARY BULLETIN and co-editor of The Frolicks or The Lawyer Cheated (1671), by Elizabeth Polthouse (Cornell University Press, 1977).

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