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THE ULTIMATE OLDIE BUT GOODIE

WILLIAM BLACKSTONE'S *COMMENTARIES ON THE LAW OF ENGLAND*

Robert C. Berring[†]

There is no denying the success of the book; and so far there has been little question about its influence, especially in the United States. But what was great about this urbane account of the common law system?[1]

While serving as Deputy Director of the Harvard Law Library in 1978, I was asked by Dean Albert Sacks to take on a special project. A wealthy alumnus was on the verge of making a substantial gift, but he would do so only if someone tracked the changes made by William Blackstone to his *Commentaries on the Laws of England* in the editions published during his life. I was given a research assistant and a chance to impress the Dean. No more incentive was needed.

As with most American lawyers, Blackstone's *Commentaries* was familiar to me. Familiar in the same manner as Joyce's *Ulysses* or Proust's *Remembrance of Things Past*: books that I knew were important and which I had never seriously attempted to read. Discovery awaited me.

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[1] Milsom, "The Nature of Blackstone's Achievement," 1 Oxford Journal of Law 2 (1980). Appropriately enough, this article is a printing of Professor Milsom's delivery of the annual Blackstone Lecture at Pembroke College.

As a logical beginning to the project I read the first edition of the *Commentaries*. To my surprise the text was not just readable, it was fun. Once I had mastered the art of reading the f's as s's and plowing through the alternative spellings (Blackstone's spelling anticipated Twitter that way) I enjoyed it. In a sense this is as it should be. The *Commentaries* are the record of lectures that Blackstone gave to the landed gentleman students at Oxford. The students were not to be specialists, they were to be landowners, gentlemen, and nobility, all of whom would need some expertise in the law to handle matters once back home. While knowledge of the law might be beyond the ken of the common person, those with privilege bore special responsibility. Understanding the basics of the legal system was part and parcel of civic duty. As Blackstone put it:

> But those upon whom nature and fortune has bestowed more abilities and greater leisure cannot be so easily excused. These advantages are not given them not for the benefit of themselves only, but also of the public: and yet they cannot, in any scene of life, discharge properly their duty either to the public or themselves, without some degree of knowledge of the law.[2]

Blackstone was a popularizer. The lectures were not part of the accepted academic program. Roman Civil Law was the proper object of scholarly endeavor. The Common Law of England was beneath academic study. Such a division between the law as viewed by legal scholars and the law as practiced in real life is not unfamiliar to the 21st-century observer. In the real world of 18th-century England, Common Law governed day-to-day life. Much like the difference between the articles that appear in the *Harvard Law Review* and the operation of the local courts today, the divide between theory and practice was wide and deep. Blackstone's genius lay in planting the Common Law in an academic setting. Since his lectures were offered as a voluntary option for students, they had to earn their way on the merits. The lectures had to attract attendees by quality and they did so.

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[2] 1 Blackstone *Commentaries on the Law of England* 7 (1765).

Much has been written about how the *Commentaries* came to have such influence in the United States.[3] The most important point is that the *Commentaries* not only supplied answers to legal questions, it also created a basic structure for how to think about legal issues. Blackstone created categories and put the great messy cake of the English Common Law into a comprehensible system. He taught his readers how to conceptualize legal questions. Bringing order out of chaos, putting a structure in place that allows one to think about questions in an orderly manner is pivotal to the law. Categorization is destiny. Once we begin to think of questions in a certain structural form, it is very hard to escape it. What begins as a useful paradigm for explaining phenomena morphs into a dogmatic reality. The *Commentaries* began as a noble attempt to make the Common Law comprehensible, as time passed it became an oracle: not a summary of the law but the law itself. United States lawyers still deal with the world in the terms introduced by the *Commentaries*.

For lawyers in the newly developing United States, the *Commentaries* were a godsend. In the days before the West Publishing Company, Westlaw, and Lexis, legal materials in the United States were difficult to come by. The *Commentaries*, usually in an abridged or American edition, was the only source of law for many lawyers. As Daniel Boorstin puts it:

> For generations of American lawyers, from Kent to Lincoln, the Commentaries were at once law school and law library. In view of the scarcity of law books in the early years of the Republic, and the limitations of life on the frontier, it is not surprising that Blackstone's convenient work became the bible of American lawyers.[4]

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[3] Boorstin, *The Mysterious Science of the Law* (Harvard U. Press 1941), remains my favorite book on the importance of Blackstone. It is dated but remains a literate, incisive treatment of the *Commentaries*' place in intellectual history. Professor Wilfrid Prest's *William Blackstone: Law and Letters in the 18th Century* is the definitive biography. A volume of essays on Blackstone is currently being compiled by Professor Prest, with publication scheduled for fall, 2014.

[4] Boorstin, pp. 1-2.

Soon the *Commentaries* morphed into the equivalent of a primary source. As Professor Jessie Allen of the University of Pittsburgh Law School points out in her introductory essay (pages 195-205 below), it is a primary source that is chock full of contradictions and even a few howlers, but once an authority is crowned, it is crowned.

Ergo you should consider giving the *Commentaries* a try. To tempt you to sample the pleasures of the *Commentaries*, we have transcribed the first ten pages of Chapter One. Working from the text of the first edition, the 18th-century printing convention of using f's in place of initial s's has been converted to the modern form. (It is not hard to accomplish said conversion in one's head, but we want to make it as inviting as possible). Observe the rhythm of the text and the acuity of the observations. It still reads well. Do not be discouraged by the obsequious first paragraph, such opening statements of humility were de rigeur at the time. The text grows fascinating quickly. We consciously stuck to the first edition. Many American lawyers used American editions produced by Judge Cooley or by St. George Tucker and there are numerous appealing variants, but we decided to honor the rule of "in for a dime, in for a dollar." This is the straight stuff.

To put the *Commentaries* into perspective, Professor Allen has written an introduction for us. She knows whereof she speaks. Since 2008 she has blogged about the *Commentaries* in *Blackstone Weekly*, writing insightful reflections as she works through the first edition. If you are at all interested in the *Commentaries*, check this blog.[5] In her introduction, Professor Allen points out the frequency with which the *Commentaries* continue to be cited by United States courts. She sketches out both the glory and the internal contradictions in the *Commentaries*. Analyzing a work like this one after much of what was new and exciting when it first appeared has now become commonplace, is no easy task. With a felicitous style, Professor Allen pulls off the trick. Her short piece provides valuable insight into the very soul of the *Commentaries*.

[5] blackstoneweekly.wordpress.com/about/.

If the reader is encouraged to read more, the choices of where to turn are many. If one wishes the straight stuff, the University of Chicago Press produced a wonderful facsimile of the first edition that is still in print in paperback. The inimitable HeinOnline has a fine facsimile of the first edition. The Yale Law Library's Avalon Project provides a more readable version. In any form it is a good read, much more artful than the typical opinion from the Supreme Court of the United States. There are many abridgements and edited editions, a raft of them designed especially for the United States market. There is even a humorous edition.[6] The range of choices is bountiful. In any case, give it a try. If you enjoy literature written in the grand old style you will be in for a treat. In any case, you will learn some law as well as some very odd English history. Besides, after you read it, then you can tell colleagues that you did. ❶

[6] Catherine Spicer Ellis compiled a definitive list of the editions of the Commentaries in her 1938 work *The William Blackstone Collection in the Yale Law Library: A Bibliographic Catalog*, Yale Law Library Publications, No. 6. Ms. Ellis records the holdings of the massive Yale collection of the editions of the *Commentaries*, and she sought out those Yale did not possess. The book is written in a graceful style and deserves its fame among bibliographers.

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