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PARENTAGE

In the latter half of the seventeenth century there resided at Chilton Foliot in Wiltshire a gentleman called Lovelace Bigg. He owned the Manor House and much land at Chilton; he was in fact the squire of the parish. He had married Dorothy Wither, who was also a member of a distinguished county family in Wiltshire. They had six sons and six daughters; their eldest daughter, Mary, was born in 1687. The eldest son remained in Wiltshire and inherited the family estates. Another son, Dr. Walter Bigg, became Fellow and Warden of Winchester College. The third son, Thomas, came up to London, studied medicine, walked the hospitals and soon became a surgeon in good practice.

In London Thomas Bigg made the acquaintance of a young man named Charles Blackstone. His father was an apothecary in Newgate Street, but his family also came from Wiltshire, from the neighbourhood of Salisbury. Charles Blackstone himself was in business as a silk mercer in Cheapside; he was also a member of the Bowyer's Company and a citizen of London. In those days a tradesman, however worthy, was not as a rule on terms of equal friendship with members of the landed aristocracy. Nevertheless, when Mary Bigg came up to town to visit her brother, Thomas, she met at his house Charles Blackstone, who fell in love with her and eventually won her to be his bride. Like a true woman, she went to live with him over his shop in Cheapside. This was the more remarkable as her younger sister, Alethea, made a distinguished match by marrying Seymour Richmond, Esquire, the Recorder of the Borough of Wallingford in Berkshire; so that Mary's marriage was no doubt regarded as a *mésalliance*. Yet it had this advantage that, as in the somewhat similar case of John Shakespeare and Mary Arden, the children of Charles Blackstone and Mary Bigg inherited the industry, activity and business capacity of their father as well as the sweeter and purer nature of their more aristocratic mother.

Charles and Mary Blackstone had four children, the second of whom, John, died an infant. Charles, the eldest son, and Henry, the third son, were educated at Winchester School under the care of their

¹ A lecture delivered at Gresham College on February 21st, 1917, with considerable additions.

uncle, Dr. Bigg; they both became Fellows of New College, Oxford, and eventually took holy orders. The fourth and youngest son was William Blackstone, the author of the famous *Commentaries*. He was, as his brother-in-law James Clitherow remarks,²

“a Man, who without Fortune, Family Interest, or Connexions, raised himself by a diligent Attention to his Studies, even from his earliest Youth, and the strictest Sense of every moral and religious Duty, to a very eminent and honourable Office in his Profession.”

William Blackstone was born in the house of his late father in Cheapside on July 10th, 1723. His father had died some months before he was born. His mother survived, but from his birth his uncle Thomas, the eminent surgeon, most kindly took care of him as well as of his brothers, and provided them all with a good education. This uncle subsequently, on the death of his elder brothers, succeeded to the family estates at Chilton, and was thus in a still better position to help his three surviving nephews. His sister Mary died in 1735, when William was about twelve years old.

EDUCATION

In 1730, when Blackstone was about seven years old, he was sent to school at the Charter-House. In 1735, he was admitted upon the foundation there by the nomination of Sir Robert Walpole, on the recommendation of Charles Wither, Esquire, of Hall in Hampshire, his cousin by the mother's side. At the age of fifteen he became head of the school. He obtained an exhibition from his school which enabled him to proceed to the university and on November 30th, 1738, he was entered as a commoner at Pembroke College, Oxford, and matriculated on the next day. About this time, also, he won a gold medal as a prize for a poem on Milton. In February, 1739, he was elected to one of Lady Holford's Exhibitions for Charter-House Scholars at Pembroke College. While at Oxford he devoted himself with ardour to the study of the Greek and Roman poets. In his spare time he translated many passages from these poets into English verse, and composed some original poetry; but these early efforts—fortunately, perhaps—have never been published. He also wrote some notes on Shakespeare which were published by Mr. Steevens in 1780 or 1781 in his edition of the plays. These notes show how well Blackstone understood the meaning, and appreciated the beauties, of his favourite poet.

² See his Preface prefixed to the edition of Blackstone's *Reports* (1781) ii. Any passages between quotation marks occurring in this account of Blackstone's life are cited from this preface, unless another reference is given.

AT THE MIDDLE TEMPLE

Eventually, however, he chose the law as his profession. He was entered as a student at the Middle Temple on November 20th, 1741, and began to read law with his usual application. The commencement of his legal studies was the occasion of his writing a poem (subsequently published by Dodsley in the 4th volume of his *Miscellanies*) entitled *The Lawyer's Farewell to his Muse*. After composing this pathetic adieu he gave up writing verses and devoted himself to *Coke upon Littleton!* He found time, however, in the twentieth year of his age to compile a short treatise on architecture—a science of which he was especially fond; this was never published.

Now it must be remembered that at this period legal education in England was at a very low ebb. Only Roman law—and very little of that—was taught at either university, while the Inns of Court in London, which were founded expressly for the study of the common law, did very little in the way of direct legal education. No one attempted to teach the principles of English law by means of regular oral lectures, and there were no readable text-books in which these principles were clearly stated and expounded. The course of study adopted by students of the Inns of Court who were willing to work was usually as follows. They began by entering the chambers of a conveyancer or the office of a solicitor, and busily copied deeds, writs, and other legal documents, the precise effect of which they seldom understood, though they thus learnt some details of the procedure of the courts. Next they studied in the chambers of a “special pleader” and struggled for two years or more with the mysteries of the art of pleading. Then, as soon as they were called to the Bar, they attended one of the superior courts at Westminster, watching the proceedings and often recording in their note books the arguments of counsel and the decisions of the learned judges. Young Blackstone probably pursued each of these three methods of acquiring legal knowledge; he certainly was regular in his attendance at the Court of King’s Bench and worked industriously at his notes, some of which were afterwards published in his *Reports*.³

But Oxford had not forgotten him. In November, 1743, he was elected into the Society of All Souls College; and in the November following he spoke the Anniversary Speech in commemoration of Archbishop Chichele, the founder of that house, and was admitted actual fellow. He then began to divide his time between the university and London. He took chambers in the Temple, seriously studied law and diligently attended the courts. But at the end of each legal term he returned to Oxford, where he continued his academical studies.

* The earliest of the cases printed in his *Reports* is dated Michaelmas Term, 1746, the very term in which he was called to the Bar.

He was always industrious and thorough, so at each seat of learning he speedily scored a success. He commenced Bachelor of Civil Law at Oxford on the 12th of June, 1745, and was called to the Bar at the Middle Temple on the 28th of November, 1746.

Like many other barristers both in the eighteenth and nineteenth centuries, he made his way very slowly in the years which immediately followed his call to the Bar. It is always an uphill fight. In spite of his reputation at college he attracted scant notice, made few friends, and acquired little practice. True, he was learned in the law; but this fact was as yet known to very few London attorneys. And a reputation for knowledge of law does not of itself bring many briefs to the chambers of a new-fledged barrister. Moreover, he had no great flow of eloquence, nor was his delivery graceful. Yet he gradually made the acquaintance of some eminent men in his profession who appreciated his abilities and understood his worth.

In 1749, on the resignation of his uncle, Seymour Richmond, he was elected Recorder of the Borough of Wallingford in Berkshire, and received the king's approbation on May 30th. Though only a small salary was attached to this appointment, it gave him a certain standing among his contemporaries at the Bar. But on the other hand, Oxford now made larger claims on his energy and time. In the same year, 1749, he was made Steward of the Manors belonging to All Souls and appointed Bursar of that College. And on April 26th, 1750, the university conferred upon him the degree of Doctor of the Civil Law; this made him a Member of Convocation.

Of course the great mistake which Blackstone made at this period of his life was his attempt to ride two horses at once. He still continued to reside in Oxford for almost half the year. "The Law," as has been often said, "is a jealous mistress;" and clients do not like "half-timers"! But Blackstone was in his heart "a don;" he loved Oxford better than the Temple. Moreover, he was a person of far greater importance in Oxford than at the Temple. In the university his scholastic successes were well known, and he had a recognized position as a fellow of one of the best colleges. He was warmly welcomed whenever he came back to All Souls, and in return he rendered much good service to that college. He never neglected his duties as fellow, steward and bursar. He found the accounts and muniments of the college in much disorder and at once made a thorough search for the missing deeds and account books; as soon as they were all discovered he instituted a new arrangement which his successors in office found most satisfactory. He composed a little treatise "in which he entered into the whole theory and elucidated every intricacy that might occur" in the keeping of college accounts, which was much appreciated by other bursars. Blackstone certainly possessed the faculty of exposition. Next he devoted himself to securing the completion of the Codrington Library—which is still the

pride of the college—"rectified several mistakes in the architecture and formed a new arrangement of the books under their respective classes." We can readily understand what a change it was for a man who was so highly esteemed in Oxford and who was fully conscious that such esteem was well-deserved to return to his empty chambers in the Temple and to sit in the back row of the Court of King's Bench, unrecognized and unemployed.

At last he could stand it no longer. In Michaelmas Term, after the long vacation of 1750, he ceased regularly to attend the courts at Westminster, though he still passed the greater portion of the year in London. But he found that the expenses thus incurred far exceeded the profits which he made in his profession. Hence, in the early part of the year 1753, he decided that at the first good opportunity he would abandon his chance of success at the Bar in London, and devote his whole time to an academical career. He could live very comfortably in college on his fellowship and stewardship, and on such small fees as he could obtain by practicing as a local barrister.

LECTURES AT OXFORD

And a good opportunity soon occurred. In the early part of the year 1753, the Regius Professorship of the Civil Law (that is, of Roman Law) at Oxford became vacant, and Blackstone at once determined to apply for the post. The Honourable William Murray, then Solicitor General,⁴ strongly supported his application. The appointment lay with the Crown, that is, with the Prime Minister; and the Prime Minister at this time was Thomas Pelham Holles, Duke of Newcastle. I will narrate what followed in the words of Lord Campbell,⁵ who gives to Murray

"the credit of discovering and turning to public usefulness the genius of Blackstone as a jurist. The professorship of civil law in the University of Oxford being vacant, he recommended this extraordinary man, then quite unknown, as decidedly the fittest person to fill it. The Duke of Newcastle promised him the appointment; but, ever eager for a dirty job rather than for the public good, he thought it right to probe a little the political principles of the candidate, and to ascertain how far he could be relied upon as a party tool, and, *more suo*, he thus addressed Mr. Blackstone when presented to him: 'Sir, I can rely on your friend Mr. Murray's judgment as to your giving law-lectures in a good style, so as to benefit the students; and I dare say I may safely rely upon you, whenever anything in the political hemisphere is agitated in that University, you will, sir, exert

⁴ Afterwards Earl Mansfield and Chief Justice of England.

⁵ *Lives of the Chief Justices of England* (1849) 378, 379. It will be observed that the Duke of Newcastle alludes to him as "Mr. Murray" simply. Murray was the fourth son of Lord Stormont and therefore declined the honour of knighthood when he was made Solicitor General, as he was already of higher rank.

yourself in our behalf.' The answer was, 'Your Grace may be assured that I will discharge my duty in giving law-lectures to the best of my poor abilities.' 'Ay, ay,' replied his Grace hastily, 'and your duty in the other branch, too.' Blackstone made a hesitating bow, and, a few days after, had the mortification to find, from the Gazette, that Jenner, utterly ignorant of law, civil, canon, and common, but considered the best electioneering agent in the whole University, was appointed to expound the Pandects, which he had never read, and could not construe.

"Murray behaved with spirit and judgment; for he advised Blackstone to settle at Oxford, and to read law-lectures to such students as were disposed to attend him. The plan had splendid success, and, happily, soon after suggested to the mind of Mr. Viner the establishment of a professorship for the Common Law of England in the University of Oxford. To this we owe the immortal Commentaries of Blackstone. . . ."

It was, of course, a most fortunate thing that the Duke of Newcastle behaved as he did, otherwise Blackstone would have spent all the rest of his life wandering about in the catacombs of a defunct jurisprudence instead of expounding the principles and aiding in the development of a living and growing system of modern law. Still, the appointment of Dr. Jenner was a great disappointment to him. But he had already practically decided to leave London and return to Oxford. Murray and other friends strongly recommended this course; they advised him to settle in Oxford and to read law-lectures "on his own foundation" to all students who cared to attend them. This he decided to do.

And now Blackstone made a bold but a very wise decision. He determined to lecture on *English* law. This was a great innovation; no one had ever before dared to deliver such lectures in Oxford. And it was Blackstone's own idea. Many reasons no doubt contributed to his decision—one, that he did not care to enter into direct competition with Dr. Jenner, who succeeded in winning the appointment which Blackstone had failed to obtain—another, that he knew more of English law than of Roman law, and much preferred the former.

It is true that the writer of the life of Blackstone in the *Dictionary of National Biography* asserts that, after the Duke of Newcastle's treatment of Blackstone, Murray advised him to go to Oxford and read lectures "*on English law.*" But I can find no authority for this statement. Lord Campbell does not mention English law. The writer in the *Dictionary* cites 1 Holliday, *Life of Mansfield* [1797] 88-89 as his authority. But Holliday says nothing of the sort. What I find on page 89 of his book is the following:

"Nothing less than love of science could, under these circumstances, have induced Mr. Murray and some other friends of Mr. Blackstone strongly to recommend and persuade him to sit down at Oxford, and to read law-lectures to such students as were disposed to attend him."

Hence, there is no ground for depriving Blackstone of the credit which he deserves for having originated the idea of teaching English law in a university which had hitherto bestowed attention only on civil and canon law. Indeed, his brother-in-law tells us that, previous to the summer of 1753, Blackstone had "planned, what he now began to execute, his Lectures on the Laws of *England*."

It was in Michaelmas Term, 1753, that Blackstone began to deliver lectures on English law in Oxford. These lectures, as his brother-in-law assures us—even at their commencement, "were attended by a very crowded Class of young men of the first Families, Characters, and Hopes," and this although the fee for attending the lectures was six guineas a year! Among his audience, I am glad to learn, were several students from our American colonies, which had not yet been severed from their mother-country by the folly of Lord North. Blackstone certainly was highly pleased with his pre-Vinerian audiences. On October 25th, 1758, in the Public Schools at Oxford, he proudly declared his

"satisfaction, by bearing open testimony: that in the very infancy of these studies among us, they were favoured with the most diligent attendance, and pursued with the most unwearied application, by those of the noblest birth and most ample patrimony: some of whom are still the ornaments of this seat of learning; and others at a greater distance continue doing honour to its institutions, by comparing our polity and laws with those of other kingdoms abroad, or exerting their senatorial abilities in the councils of the nation at home."⁶

They must have been quite exceptional students!

On the conclusion of his course of lectures in each of the years 1756, 1757, and 1758, he published a *précis* of them, for the use of those who attended his class, under the title *An Analysis of the Laws of England*, "in which he reduced that intricate science to a clear method, intelligible to the youngest student." It is interesting to compare these analyses with the finished product of his labours—the *Commentaries*.

He also continued to do much work for the good of his college and his university. Within a few months of his return to Oxford in 1753 he was appointed Assessor of the Vice Chancellor's Court. In July, 1755, he was appointed one of the Delegates of the Clarendon Press—the press by which his *Commentaries* were subsequently printed and published—and there he instituted many necessary reforms. In 1758, he wrote a small treatise entitled *Considerations on Copyholders*, which is said to have contributed to the passing of an Act dealing with the county franchise.⁷

⁶ See p. xxxii of the original *Discourse* to which I refer on p. 607 *post*; *cf.*

1 *Bl. Com.* (1st ed.) 13.

⁷ 31 Geo. II, ch. 14.

At the beginning of Michaelmas Term, 1756—with that strange vacillation which he always displayed in this matter—Blackstone, though he was very busy in Oxford, suddenly resumed his attendance in the Court of King's Bench in London, from which he had been absent nearly six years.⁸ And in the years 1757, 1758, and 1759, he attended the courts in London during two terms only—Michaelmas and Hilary—spending the rest of his year in Oxford. Perhaps, however, his object in constantly reappearing in London was to make himself acquainted with the most recent decisions, and so to improve his lectures.

THE VINERIAN PROFESSORSHIP

Now there was at the Middle Temple an eminent lawyer, Charles Viner, whom Blackstone must have known especially, as he was the son and heir of Charles Viner of Salisbury. He was admitted a student of the Middle Temple on November 27th, 1700, when he was 22 years old, but never called to the Bar. He devoted fifty years of his life to the preparation of a great work, entitled *A General Abridgment of Law and Equity, alphabetically Digested under Proper Titles, with Notes and References*. It was published between 1742 and 1753 in 22 thick volumes; a monument of enthusiastic industry.⁹ This *Abridgment* is denounced in the *Dictionary of National Biography* as "a vast and labyrinthine encyclopædia of legal lore ill-arranged and worse digested." But this censure is not wholly deserved. The *Abridgment* was and is a remarkable piece of work for one man to have accomplished, and even at the present day is useful for occasional reference.¹⁰ It was printed at the author's own house on paper manufactured for the purpose. Viner died at Aldershot on the 5th of June, 1756. By his will, dated December 29th, 1755, he left to the University of Oxford the copyright of his *Abridgment*, all copies of it remaining unsold, and a considerable amount of other property (valued at £12,000), in order to found a professorship of the common law of England and as many fellowships and scholarships in the same branch of learning as the bequest might be capable of supporting.

It has been frequently asserted, and was and is generally believed, that it was the success which attended Blackstone's lectures at Oxford which induced Viner to make this munificent bequest to the university, and that it was Viner's wish that Blackstone should be the first to

⁸ There is a gap in his *Reports* of nearly six years—the case of *The King v. Lord Montacute and others*, 1 W. Bl. 60, which was decided in Michaelmas Term, 1750, being immediately followed by the case of *Rolls v. Barnes* (p. 65) which is dated Michaelmas Term, 1756.

⁹ Two more volumes were subsequently published which contain an excellent alphabetical index.

¹⁰ See an excellent and interesting lecture, delivered by Professor A. V. Dicey on his retirement from the Vinerian Professorship on June 12th, 1909, which was subsequently printed in the *NATIONAL REVIEW* (December, 1909) 653.

hold the new professorship. Holliday, in his *Life of Lord Mansfield* (in continuation of the passage already quoted), states this positively:¹¹

“The plan was not only attended with profit and pleasure in the first instance, but soon afterwards happily suggested the idea to the mind of Mr. *Viner* to establish a real law-professorship in the university of Oxford; and who so proper to fill it with eclat, and add lustre to the Institution, as Mr. Blackstone . . .”!

Lord Campbell, as we have seen,¹² uses precisely the same phrase—that the “splendid success” of Blackstone’s lectures

“soon after suggested to the mind of Mr. *Viner* the establishment of a professorship for the Common Law of England at the University of Oxford.”

This may have been so. The dates at all events render it possible, as Blackstone’s first lectures in English law were delivered in the autumn of 1753 and *Viner*’s will is dated December 29th, 1755. But we must always remember that, when making such statements as this, Lord Campbell relied on tradition and legal gossip more than on research.

The statutes relating to Mr. *Viner*’s foundation were confirmed by convocation on the 3d of July, 1758. The will provided that the professor was to be elected by a board consisting of the Chancellor of the University, the Lord Chief Justice of England, the *Regius* Professor of Civil Law, the *Corpus* Professor of Jurisprudence, and a person nominated on each occasion by All Souls College to act as elector. On the 20th of October, 1758, Blackstone was unanimously elected by these gentlemen the first *Vinerian* Professor at a salary of £200 a year. This appointment was no doubt largely due to the strong recommendation which he received from Lord Mansfield, who was now Chief Justice of England.¹³ It was his duty to read each year sixty lectures on the laws of England, and these were to be delivered in the English language.

On October 25th, 1758, Blackstone read in the Public Schools at Oxford an *Introductory Discourse on the Study of the Law*, which was published at the request of the Vice-Chancellor and heads of houses. It was in this *Discourse*—on his first appearance in public as *Vinerian* Professor—that Blackstone laid down two new and startling propositions, for the enunciation of which all Englishmen should be grateful to him:

(1) That English people should be taught the law of England and not exclusively the law of Rome; and

¹¹ *Life of Lord Mansfield*, 89.

¹² *Supra*, p. 604.

¹³ He was sworn in as Chief Justice on November 8th, 1756, and created Baron Mansfield on the same day.

(2) That the law of England should be taught to all English people, and not merely to a section of them who wish to become professional lawyers.

He declared that

"if an Englishman must be ignorant of either the one or the other, he had better be a stranger to the Roman than the English institutions. For I think it an undeniable position, that a competent knowledge of the laws of the society in which we live is the proper accomplishment of every gentleman and scholar, and a highly useful, I had almost said an essential part of liberal and polite education." And yet "it has been the peculiar lot of our admirable system of laws, to be neglected, and even unknown, by all but one practical profession; though built upon the soundest foundations, and approved by the experience of ages."

I am the happy possessor of the original edition of this opening *Discourse* printed by the Clarendon Press, and published in November, 1758, a fact which shows what good order the lecturer had created in the University Press! This *Introductory Discourse* ultimately became in substance the first chapter of Blackstone's *Commentaries*; but with many differences—at all events in the later editions of that work. The copy which I possess is the verbatim report of an oral lecture delivered on a special occasion, in which the lecturer speaks of himself in the first person and alludes to Charles Viner as "our wise and munificent benefactor." These personal allusions are all omitted in the later editions of the *Commentaries*, and the oral address beginning with the words "Mr. Vice-Chancellor and Gentlemen of the University," is converted into a formal prefatory chapter.

And to us in England at this moment it is not uninteresting to note that Blackstone had a dim notion that the study of English law should, possibly, not be confined to English men but actually extended to English women! For in my original edition of the opening *Discourse* I find a learned note¹⁴ in which he quotes a writer of the fifteenth century, Bernardinus de Busti, who states in so many words that

"it does not appear to me unseemly that women should know law; for it is written concerning the wife of John Andreas, the commentator, that she was so learned in both the civil and the canon law that she dared to teach publicly in the schools. '*Nec videtur incongruum mulieres habere peritiam juris. Legitur enim de uxore Joannis Andreae glossatoris, quod tantam peritiam in utroque jure habuit, ut publice in scholis legere ausa sit.*'" (Mariale, pt. iv, serm. 9.)

I think that this note, which was retained in all the early editions of the *Commentaries*, should be brought to the attention of Lord Buckmaster, who has just carried through the House of Lords a bill to enable women to become solicitors, a thing hitherto impossible in England.

¹⁴p. xlv. Cf. 1 *Bl. Com.* (1st ed.) 21.

His Vinerian lectures speedily acquired so great a reputation that "a noble personage" who superintended the education of the then Prince of Wales, afterwards George III, requested Blackstone to come up to London to read them to the Prince. His engagements as professor at Oxford prevented his doing this, but he sent manuscript copies of many of them to his Royal Highness who, apparently, read them with pleasure; for when the lectures were returned, the Prince sent him "a handsome gratuity."

RETURN TO LONDON

But now Westminster Hall once more attempted to entice him to return. The allurements this time were certainly attractive. Before the end of the year 1758 he was pressed by Lord Chief Justice Willes and Mr. Justice (afterwards Earl) Bathurst to accept the honour of the Coif—that is to say, to become a serjeant-at-law. But it was an expensive business to be made a serjeant-at-law in those days. In addition to the cost of the patent, the new serjeant was expected to present to every judge of the three superior courts at Westminster a massive gold ring, inscribed with a sentimental motto; and the presentation was generally accompanied by prolonged festivities at the expense of the new serjeant. Moreover, by becoming a serjeant, Blackstone would have lost much of his practice as a junior counsel. Hence, he declined the tempting offer, and continued to lecture at Oxford.

But though Blackstone felt himself compelled to refuse this friendly offer, the flattering terms by which it was accompanied and the warm assurances given as to his prospects of success at the Bar, made a great impression on his mind. He now began to ask himself had he been wise in quitting London in 1753? Or, at all events, had he not now established a reputation by his lectures which would justly entitle him to expect some favourable notice at the Bar?

And here note the strange vicissitudes of Blackstone's career. In 1753 it was his failure at the Bar that induced him to return to Oxford and become a lecturer on law; and now it is his success as a lecturer at Oxford that induces him to return to London to try once more his chances at the Bar.

Eventually, in June, 1759, he took the decisive step. He took a set of chambers at No. 2, Brick Court, Middle Temple. He resigned the office of Assessor of the Vice-Chancellor's Court, and soon after the stewardship of All Souls College; and in Michaelmas Term, 1759, resumed regular attendance at Westminster, still continuing to pass some part of the year at Oxford, and to read his lectures there, at such times as did not interfere with the London terms. Toward the close of the year 1760 he was offered, but declined, the office of Chief Justice of the Court of Common Pleas in Ireland. He was now

getting into practice at Westminster Hall and had no desire to quit England for the sister island.

On February 5th, 1761, he was admitted a member of the Society of Antiquaries—in consequence, no doubt, of the edition of the *Great Charter, and Charter of the Forest* which he had published in November, 1759, and which showed him to be not only a great lawyer, but also an accurate antiquarian, and an able historian.

In the following month (March, 1761) he was elected Member of Parliament for Hindon, a pocket borough in Wiltshire not far from Salisbury. The result of his election to Parliament was that his practice at once increased. Hence, on May 5th, 1761, he married Sarah, the eldest surviving daughter of the late James Clitherow, Esquire, of Boston House in the County of Middlesex.¹⁵ This was speedily followed by another blessing; for on the very next day he was granted a patent of precedence as a king's counsel.

His marriage, of course, vacated his fellowship at All Souls. But Oxford would not let her favourite desert her without a further effort to retain his affections. On July 28th, 1761, he was appointed principal of New Inn Hall by the Earl of Westmoreland, who at that time was Chancellor of the University of Oxford. This appointment provided him with

“an agreeable Residence during the Time his Lectures required him to be in *Oxford*, and was attended with the additional pleasing Circumstance, that it gave him Rank, as the Head of a House in the University, and enabled him, by that Means, to continue to promote whatever occurred to him, that might be useful and beneficial to that learned Body.”

And now came another strong temptation once more to give up the Bar and settle in Oxford. He had obtained a considerable amount of practice in Westminster Hall, but not so much as he had anticipated. He was beginning to find that it is difficult for a man, even though he is a king's counsel, to be in two places at once. And in those days Oxford was much further away from London than it is now, as railway trains were not yet invented. Under the Vinerian Statutes he had power, as professor, to appoint a deputy to read the lectures. But as soon as he attempted to exercise this power because he could not conveniently come up to Oxford to lecture in every term, an outcry arose. This was, indeed, complimentary to Blackstone, as it showed that Oxford desired to have him there in person. He pub-

¹⁵ It is to her brother, Mr. James Clitherow, that we are indebted for the carefully written *Life of Sir William Blackstone* which is prefixed to the first volume of his *Reports* published after his death in 1781. This biography is, indeed, the only source from which many details of his life have come down to us. And any passages which appear in this article between quotation marks are taken from this preface, unless another source is indicated.

lished a *State of the Case for the Perusal of the Members of Convocation* which convinced that body that he had power to appoint a deputy when occasion required. But he felt that it would not be proper for him to avail himself frequently of this power.

There is no doubt that when Blackstone accepted the Vinerian Professorship he had formed the design of settling in Oxford for life. He thought he saw his way to unite the professorship with the headship of one of the halls or smaller colleges, and to make it a school of English law in which the Vinerian fellows and scholars might live together under their professor. Mr. Viner's will very much favoured this plan. He had left his money for the purpose of

“endowing one or more Fellowship or Fellowships, and Scholarship or Scholarships *in any College or Hall*, in the said University, as to the Convocation shall be thought most proper for Students of the Common Law.”

But this plain direction to establish them in some college or hall was eventually ignored. The scheme proposed by the delegates for carrying it into effect was rejected by convocation. This put an end to Blackstone's hope of establishing a society in Oxford for the study of the laws of England, and there was no longer the same inducement for him permanently to settle there. He continued, however, for a while regularly to deliver his Vinerian lectures.

I cannot refrain from mentioning one interesting fact. Among the auditors at Blackstone's lectures in the year 1763—though only for a short time—was a diminutive lad, strangely attired in the garb of a man of fashion. He was only 16 years old; yet he had, as the modern reader may be surprised to hear, already taken his degree as a Bachelor of Arts, and had just kept his first term at Lincoln's Inn. Such an early start was unusual, even in those days; it was due to his being the singularly precocious child of a pushing, ambitious father. His name was Jeremy Bentham. In later years he declared that Blackstone was a

“formal, precise and affected lecturer—just what you would expect from the character of his writings—cold, reserved and wary, exhibiting a frigid pride.”

But remember that at this time Blackstone was D.C.L., M.P., F.S.A., K.C., a Recorder, and a Bencher of the Middle Temple as well as Principal of New Inn Hall, at Oxford; so that he had something to be proud of, and could not therefore be expected to welcome with effusion criticisms on his lectures tendered with assurance by the son of an attorney in the east end of London. Moreover, Blackstone had from his youth been somewhat diffident and reserved—characteristics which may easily be mistaken for unsociability and pride.

In the year 1766 Blackstone resigned both the Vinerian Professor-

ship and the headship of New Inn Hall. He felt that he could no longer discharge the duties of these offices consistently with his practice in London. He was thus finally detached from Oxford. And then, when he gave his whole mind to his work at the Bar, his success was rapid.

THE COMMENTARIES

But, before passing from the topic of Blackstone's Oxford lectures, I must deal briefly with the most important outcome of those lectures—his *Commentaries on the Laws of England*.

Blackstone always wrote his lectures before he delivered them, and he constantly edited and re-edited what he had written. The "manuscript of the lectures originally delivered by him," written in his own clear hand, is carefully preserved in four bound volumes in the library of the Law Society in Chancery Lane, London. Whether from the first he intended eventually to publish them as a legal treatise, may be doubted; but he tells us himself that certain passages which he published in his fourth volume in 1769 had been written at least fifteen years before. After his lectures at Oxford became famous, Blackstone discovered that many imperfect and incorrect copies of them had got into circulation, and a pirated edition of them was either published, or preparing for publication, in Ireland. Hence he determined to print a correct edition himself;

"he chose rather to submit his own errors to the world than to seem answerable for those of other men."¹⁰

The first volume of the *Commentaries* appeared in November, 1765. It is a handsome quarto, well printed on excellent paper, with a generous margin. It is dedicated to Queen Charlotte, though I doubt if the royal lady ever read anything except the dedication to herself—unless possibly Blackstone's startling assertion that the Queen Regnant was entitled to claim for herself all the whalebone that could be found in the *tail* of any whale thrown up on our shores! The three other volumes appeared in the course of the next three years; and the public eagerly purchased the set of four handsome quarto volumes at the price of four guineas. A later edition, published in 1778, in four octavo volumes, was sold for £1. 10. 0. It is said that Blackstone realized no less than £16,000 by his *Commentaries*—a remuneration which, I believe, no writer ever received for a single law-book before or since.

There is a tradition at the Temple to which I cannot help referring in this connection. In 1768 Oliver Goldsmith came to live in the Middle Temple. He had just received for his play, *The Good-natured*

¹⁰ These words are taken from the concluding sentence of the Preface to the first edition of the *Commentaries*.

Man, the sum of £500, which to him was wealth untold. He invested most of it in the purchase of a set of chambers on the second floor of No. 2, Brick Court, where he lived until his death in 1774. And the story goes that on the floor below him Blackstone was busy writing the last volume of his *Commentaries*, and was much disturbed by the "high jinks" going on above. We have this on the authority of the gentleman who succeeded Blackstone in the occupation of those chambers—namely, Mr. George Children, a Bencher of the Middle Temple and treasurer of that honourable society in 1804. His son told the story to Sir James Prior, who published it in his *Life of Goldsmith* in 1837. Candour, however, compels me to state that the records of the Middle Temple do not disclose the fact that the great Blackstone ever lived on that staircase at all. But this is not conclusive against the story; for Blackstone might very easily have been only a subtenant of the chambers on the first floor, and in that case they would be entered in the name of his landlord. But whether the composition of the *Commentaries* was or was not disturbed by the supper parties of the poet, there is no doubt that the work was, from the first day of its publication, an enormous success.

This is not the place in which to discuss Blackstone's doctrines as to sovereignty and the state or his theories as to the sources of law—still less, to examine into the accuracy of everything which he asserts to be fact. But I wish to state briefly what I conceive to be the three features of his work which deserve especial praise.

(1) He addressed himself to Englishmen of all ranks and classes, and not to the legal profession or those who desire to enter it. He recognized that the law of England is not the private property of a professional class, but of the people of England as a whole. Hence he aspired to teach the principles of our law to laymen—with the result that his book received what was then regarded as the highest possible compliment a work can obtain: "no gentleman's library could be complete without it."

(2) And, because he was addressing Englishmen of every rank and class, and not merely professional lawyers, he most properly devotes the bulk of his book to the definition of the rights and duties of an Englishman, and not to the legal procedure by which such rights are protected and such duties enforced. A state has been loosely defined¹⁷ as a political community which governs itself, and it governs itself by means of laws. A law is a rule of conduct which the state prescribes and enforces; it is prescribed by substantive law, and enforced by adjective law. In other words, substantive law deals with rights and duties, adjective law with remedies.

All English legal writers from the publication of *The Doctor and the Student* till Blackstone wrote his *Commentaries* had stated the law

¹⁷ See the present author's *The Common Law*, 951.

adjectively rather than substantively; that is to say, from their works the remedy can be ascertained more readily and easily than the precise nature and extent of the right infringed. They were not so much interested in the principles of English law as in the question, In what form of action ought a given plaintiff to sue? The principles were there, no doubt, *rari mantes in gurgite vasto*; but no one except a professional lawyer could readily discover them. Blackstone always endeavoured first to define each right—and, as a rule, he does define it clearly and accurately—leaving the remedy to follow as a corollary.

Blackstone has another merit. He does not mix up the history of law with the statement of the existing law. It is my experience that students are often greatly puzzled and misled by authors who do not keep history severely apart from the present law. No doubt it is sometimes necessary to know the history in order to understand the present law; and in such cases Blackstone gives us both, though keeping them separate and distinct. But, as a rule, he is content, and rightly content, to state only the law as it stood when he wrote.

(3) Lastly, the success of the book was largely due to the clearness and beauty of its style. Englishmen had been told all their lives that the principles of their law were excellent. But, when they attempted to discover those principles, they were repelled by the rugged obscurity and the disorderly and unscientific arrangement of the books which they were bidden to study. When, however, they came to read Blackstone's *Commentaries* they found, not only that the author's arrangement of his matter was excellent, but also that his style was surprisingly clear and even attractive. No doubt to us in the present day it occasionally savours of pomposity; but then we must remember that it was written in the days when Dr. Johnson ruled among the critics. The men of 1769 regarded Blackstone as a learned lawyer—nay, even as a great jurist. And yet to their astonishment they found that he was a charming writer, devoid of pedantry; they actually enjoyed reading his work. The lucidity of Blackstone's style was probably due in large measure to the fact that he had had experience in lecturing on law for twelve years or more before he published his *Commentaries*.

Lord Mansfield contrasted Blackstone's "pleasing and perspicuous style" with the "uncouth and crabbed" diction of *Coke upon Littleton*. And Lord Campbell declares in his *Life of Lord Mansfield*:¹⁸

"After Bacon, Mr. Justice Blackstone was the first practising lawyer at the English bar who, in writing, paid the slightest attention to the selection or collocation of words."

Even Bentham, who differed so violently from Blackstone on many points of substance, could not help praising the style in which the

¹⁸ 2 *Lives of the Chief Justices*, 566, n.

Commentaries are written. He describes it in a much-quoted passage thus:

“Correct, elegant, unembarrassed, ornamented, the style is such as could scarce fail to recommend a work still more vicious in point of matter to the multitude of readers. He it is, in short, who, first of all institutional writers, has taught Jurisprudence to speak the language of the Scholar and the Gentleman. . . . The merit to which, as much perhaps as to any, the work stands indebted for its reputation, is the enchanting harmony of its numbers.”

But John Austin has not a good word to say, even for Blackstone's style. Take this passage, for example:

“For that rhetorical and prattling manner of his is not the manner which suited the matter in hand. It is not the manner of those classical Roman jurists who are always models of expression, though their meaning be never so faulty. It differs from their unaffected, yet apt and nervous style, as the tawdry and flimsy dress of a milliner's doll, from the graceful and imposing nakedness of a Grecian statue.”¹⁹

He must have sharp eyes who can discover in Austin's style any resemblance to the beauty of a Grecian statue, whether nude or draped!

JOHN WILKES

But, though the *Commentaries* brought Blackstone great reputation and some wealth, he soon discovered, as many authors have done before and since, that it is sometimes highly inconvenient for a member of Parliament to have published a book. It will be remembered that on January 19th, 1764, John Wilkes had been expelled from the House of Commons for having published No. 45 of *The North Briton*. Nevertheless, in the winter of 1768-1769 he was three times elected M.P. for Middlesex, and as many times expelled on the ground that he was incapable of sitting in the house in consequence of his expulsion in 1764. A fourth election then followed in which Colonel Henry Lawes Luttrell, with all the influence of the Court and the Fox family in his favour, obtained but 296 votes against 1,143 given for Wilkes. Nevertheless, the house declared that Luttrell had been duly elected.

Blackstone took part in the debate on this question, and in his speech he laid it down as clear law that, if a man had once been expelled from the House of Commons, he was incapable of re-entering it. As soon as he sat down, Grenville rose with a quiet smile and read from the *Commentaries* the list of matters which, according to that book, rendered a man incapable of sitting in the house; and this list did not include a prior expulsion! Blackstone was at the moment incapable of replying to this *argumentum ad hominem*, though in a

¹⁹ 1 Austin, *Jurisp.* (5th ed. 1885) 69.

long correspondence which ensued he maintained that he was right, and in the next edition of his book he included a previous expulsion among the causes of disqualification.

Blackstone was probably wrong in his contention, and for a while it was the custom among the friends of Wilkes at their dinners to propose and drink the toast of "The *first* edition of Dr. Blackstone's *Commentaries on the Laws of England*." He was also attacked with much asperity in a pamphlet supposed to have been written by a baronet who was a member of the House of Commons. To this Blackstone gave an early reply in print, in which he rebutted the charge of inconsistency brought against him. But this reply only served to bring down upon him a still fiercer master of invective. For Junius now took up the cudgels and published two severe attacks upon Blackstone in his *Letters* of July 29th and August 8th, 1769.

DR. JOSEPH PRIESTLEY

There was another occasion in the same year on which poor Blackstone found that the publication of a great law-book may bring in its train unpalatable consequences. In the fourth volume of his *Commentaries* he had dealt at some length with the criminal laws which were still in force against Roman Catholics and Dissenters,²⁰ and which he attempted to justify. This naturally provoked angry feelings among the Nonconformists. One passage ran as follows:

"The virulent declamations of peevish or opinionated men on topics so often refuted, and of which the preface to the liturgy is itself a perpetual refutation, can be calculated for no other purpose than merely to disturb the consciences, and poison the minds of the people."

This gave very great offence to the Dissenters, and speedily came forth their champion.

Dr. Joseph Priestley was a man of great scientific attainments. He is well known as the discoverer of oxygen, or, as he himself called it, dephlogisticated air; he had also on the suggestion of Dr. Franklin written *The History and Present State of Electricity* (London, 1767). He had been for six years a tutor of the Dissenting Academy at Warrington, which after many changes has become Manchester College, Oxford, a home of unfettered theology. When the fourth volume of the *Commentaries* appeared he was minister of Mill-hill Chapel, Leeds,²¹ and he speedily published a pamphlet, sixty pages in length, entitled

²⁰ 4 *Bl. Com.* (1st ed.) 50-54.

²¹ It will be remembered that Dr. Priestley subsequently (in 1804) emigrated to America, founded the Unitarian Church in Philadelphia, and lies buried in Northumberland on the banks of the Susquehanna.

“Remarks on some Paragraphs in the Fourth Volume of Dr. Blackstone’s Commentaries on the Laws of England relating to the Dissenters.

“By Joseph Priestley, LL.D. F. R. S. 1769.”

Dr. Priestley’s reply to Blackstone was, as might be expected from a man of his ability and learning, forcible and even vehement. He tells his readers that he was

“the more ready to animadvert upon this writer, lest (as he is supposed to possess the confidence of the present ministry)²² his sentiments should be considered as a notification to Dissenters, in what light they are regarded by those who are in power; and it should be imagined that some design is formed to establish a system of civil and ecclesiastical tyranny. . . .”

He states the case for Nonconformity with great vigour.

To this sturdy protest Dr. Blackstone on September 2d, 1769, published a courteous reply—indeed, if we have regard to the tone in which controversies were usually conducted in the seventeenth century, it may be described as a *very* courteous reply. It will be sufficient to make a brief extract from the opening paragraphs.

“Dr. Priestley having published, in a very angry pamphlet, his *Remarks on some Paragraphs in the fourth Volume of my Commentaries*, I find myself called upon to take Notice of a Performance, to which an Author, of Reputation in the literary World, has very fairly subscribed his name. . . . I have always thought it more honourable to retract, than to persevere in an Error; and have neither Leisure, Inclination, nor Ability, to dip myself in Controversy, of any kind, much less Theological Controversy. . . . Before I descend to Particulars, I must first of all correct a mistake, which Dr. Priestley seems to have fallen into,²³ by fancying that the offensive Passages in my Book were *personally* levelled at *Him*. Let me assure him, that they were written about fifteen years ago, before (I believe) he had ever appeared as an Author. And let me add, that, till his present Remarks, I never read any of his Productions, excepting his History of Electricity; from whence I conceived a very favourable Impression of his Talents, as a *candid* and *ingenious* Writer. How greatly my Opinion, with respect to the first of those Qualities, has been altered by his late Publication, I leave to himself to imagine.”

But Blackstone had to admit that Priestley had detected some flaws in the passages to which he took objection, or, at all events, that those passages were obscurely written, and might easily convey a meaning which the writer did not intend. He complained that

“Dr. Priestley hath attributed to me the Adoption of those Principles, which I only meant to mention historically, as the Causes of the Laws which I condemn.” He continues with great fairness:

²² Dr. Priestley had no doubt good grounds for this supposition, as Blackstone was offered the post of solicitor-general in the following year.

²³ Pages 9, 10, 56, etc.

"I shall own very frankly, that (on reviewing this passage) I am convinced that it is somewhat incorrect and confused; and might lead a willing Critic to conclude, that a general Reflection was intended on the Spirit, the Doctrines, and the Practice of the body of our *modern* Dissenters. A reflection which I totally disapprove; being persuaded, that by far the greater part of those, who have now the misfortune to differ from us in their notions of ecclesiastical Government and public Worship, . . . are zealous in supporting those two great Objects of every good Citizen's care, the civil Liberties and the Peace of their Country. And so far am I from wishing to perpetuate or widen our unhappy Differences, that I shall make it my care, in every subsequent Edition of this Volume, so to rectify the Clause in question, as to render it more expressive of that Meaning which I here avow; and which, if read with a due Degree of Candour, might before have been easily discerned."

Dr. Priestley replied in an equally courteous tone in a letter which appeared in the *St. James's Chronicle* on Tuesday, Oct. 10th, 1769.

"TO DR. BLACKSTONE.

SIR,

I Have just received your *Reply* to my *Remarks on some Paragraphs in the Fourth Volume of your Commentaries*; and I sincerely thank and esteem you for it. It is a genteel and liberal Answer to a Pamphlet written, as you candidly and justly Conjecture, in great Haste; and which, I frankly acknowledge, is not, in all Respects, such as I now wish it had been. . . . As angry as my Pamphlet appears to you, I do assure you, Sir, it never entered into my Head, that anything in your Commentaries was personally levelled at me. . . . I conceived myself to be insulted in the injurious Representations you had given of the Principles and Practices of the *Dissenters in general*."

With this *amende honorable* the controversy closed. And Blackstone, in his subsequent editions, considerably modified the passages which had evoked it. Indeed, he did not hesitate to admit that Protestant Dissenters were no more injurious to the welfare of the state than Roman Catholics! In particular, he omitted from all subsequent editions the sentence set out on a preceding page as to "the virulent declamations of peevish or opinionated men."²⁴

²⁴ This controversy led Dr. Priestley to print another pamphlet, entitled *The Principles and Conduct of the Dissenters, with respect to the Civil and Ecclesiastical Constitution of this Country*. See the *Memoirs of the Rev. Dr. Joseph Priestley* (1809) 53, 54.

Dr. Odgers plans to treat of Blackstone's work as a judge, of his *Reports*, etc., in an essay to be published in a future issue of the JOURNAL.