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Review on Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769

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- W. Blackstone, *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765-1769*. Chicago: University of Chicago Press, 1979. Vol. 1: xiii, iii, 473 pp. \$8.95; Vol. 2: xv, 520, xix pp. \$8.95; Vol. 3: xii, 455, xxvii pp. \$8.95; Vol. 4: xvi, 436, [xlvii], viii pp. \$8.95. The set in cloth is \$80.00.

To have to review Blackstone's *Commentaries* is to have a delicious assignment. This is especially true when it is the reprint of the first edition that is under consideration. But it is also the umpty-umpth edition and the umpteenth American edition (only a professional bibliographer can figure this one out). In spite of Bentham's fulminations in his *Fragment on Government* (1776) and in spite of Jefferson's snide characterization of Blackstone's works as "honed Mansfieldism," the celebrated *Commentaries* are still in print and now in an inexpensive student edition. However, this reviewer is condemned to the frustrations of a thousand word space limit imposed by a heartless editor.

Professor Stanley Katz has written for volume one a short, urbane introduction, in which he summarizes Blackstone's life and constitutional views. Blackstone's first volume deals with "the rights of persons." There is a short introduction on the nature of law, and there are sixty pages at the end on what we today consider the law of persons: domestic relations, corporations, etc. The bulk of volume one, however, concerns political science, the government of England, from the legal perspective.

The second volume deals with the "rights of things," i.e., property law, and is introduced to the modern reader by the well-known English professor, Brian Simpson. Real property was the major form of wealth in the eighteenth century, and the protection of property was a major political issue. Thus the law of property was the most important branch of the law for the public and for the bar. By Blackstone's day it had become overly refined and understandable only to expert lawyers. Blackstone explains the rules of property law with the broad over-simplifications that are necessary in a book for beginners, such as the *Commentaries*.

Volume three considers the English courts and their procedures. Professor John H. Langbein, a young and prolific scholar, explains that a knowledge of eighteenth-century civil procedure is useful to modern legal researchers because procedure and substance can never be completely separated: like the medieval conceptions of the church and the state, one, it was thought, can not exist without the other. Langbein cautions the reader about the state of legal history in the eighteenth century and about Blackstone's understanding of the medieval courts. He also comments briefly on the English jurist's ideas on legal fictions, civil juries, and equity.

Professor Thomas A. Green, who has distinguished himself in the field of the history of criminal law, has given us the introduction to volume four, which is on "public wrongs." This essay is an excellent summary of Blackstone's ideas on crimes and criminal procedure.

Blackstone's *Commentaries* are unique in their clarity of exposition. They were immediately seized upon by students of the law wherever an English-based legal system was in force. One might speculate that, by making the law understandable, or at least less inscrutable, to the general public and to the legislators who were not professional lawyers, Blackstone di-

rectly aided the course of the great statutory reform of the law in the nineteenth century.

Professors Katz, Simpson, Langbein, and Green have put Blackstone into historical and legal perspective, and they provide the reader with a clear focus on the *Commentaries*. The University of Chicago Press has published this edition inexpensively and has done a signal service to the public by making this classic text once again easily accessible.

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J. H. Baker, *An Introduction to English Legal History* (2d ed.) London, Butterworth, 1979, xxx, 447 pp. \$34.15 (\$20.50 softbound).

A little over ninety years ago Maitland delivered his inaugural lecture as Downing Professor on "Why the History of English Law is not Written." How times have changed! John Baker, whose "Introduction to English Legal History" appeared in 1971, felt it necessary to bring out a second edition only eight years later because recent "original research has revealed so many new facts that our interpretations of English legal history are having to change as fast as the modern law does" (p. v). The second edition of Baker's book is indeed substantially different from the first. The first of its two parts has been rewritten, and in the second part there are two entirely new chapters (on Quasi-Contract and Economic Torts) as well as other new material. Altogether, the second edition is half again as long as the first.

Baker modestly describes his book as "as elementary historical introduction, through which the reader may find his way to more substantial works" (p. v). How well does the book achieve this objective? Perhaps a beginning student, or one who has used the book as a teaching tool, could answer this question better than I. It seems to me, however, that Baker's book is probably the best of the books of its type in print. It certainly is the most up-to-date. The author has read widely in both published and unpublished materials. The bibliographies appended to each chapter include most of the relevant books and articles published in recent years and are helpful even to the specialist. On the whole Baker's writing is clear and concise.

Legal history may be roughly divided into two parts. The first seeks to discover the legal rules which prevailed at various times in the past. As to these, we have abundant evidence for the period since 1200, and historians generally agree on what the rules were. There are exceptions. I think Baker exaggerates the deficiencies of the earlier forms of action such as debt, detinue and covenant: for example, he insists (wrongly I believe) that debt did not lie for the breach of an executory contract (pp. 268, 319).¹ One cannot be dogmatic on such issues, however, for, as Baker and others have

1. Cf. McGovern, "Contract in Medieval England: The Necessity for Ouid pro Quo and a Sum Certain," 13 *American J. of L. H.* 173 (1969).