

BOOK REVIEW

THE LETTERS OF SIR WILLIAM BLACKSTONE 1744-1780

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As author of the *Commentaries on the Laws of England*, published in the 1760s, William Blackstone is a survivor. The *Commentaries* continue to be read and relied upon in common law countries of the 21st century. Blackstone's exposition is often the starting point for investigations into the formative years of doctrines or principles in the common law – doctrines or principles that govern us still. Perhaps this is especially true in the United States where, not infrequently, constitutional issues turn on an understanding of the state of the law in 'the founding era', which cannot be discerned without an understanding of the English law of the late 18th century.

Much less well known, however, is William Blackstone the person. The attention paid to him by biographers has been surprisingly slight – only four have made the attempt: a 1782 compilation,¹ two biographies published in America in the first half of the 20th century,² and a slim biography by Ian Doolittle published in 2001.³ This glaring deficit is soon to be remedied by Wilfred Prest, who is near completion of a full-scale biographical work. As a by-product of his research, Prest has given us a prelude in this volume of letters, painstakingly collected from diverse libraries, record offices, and private holdings in England and America.

Blackstone's letters do not compare to those that exude eloquence and literary artistry (as in the letters by the Earl of Chesterfield) or those that feature political intrigue, gossip, and acid commentary (as in the 4,000 surviving letters of Horace Walpole). The Blackstone letters are nevertheless an important contribution to the legal history of the early modern era. They enlarge our understanding of Blackstone's somewhat bland personality, his ambivalence about whether to live in the practical world of law or the academic confines of Oxford, his anxiety about

¹ The Biographical History of Sir William Blackstone and a Catalogue of Sir William Blackstone's Works: With a Nomenclature of Westminster-Hall, by a Gentleman of Lincoln's Inn, published by the author (1782).

² David A Lockmiller, *Sir William Blackstone* (1938); Lewis C Warden, *The Life of Blackstone* (1938).

³ Ian Doolittle, *William Blackstone* (2001).

acquiring a judgeship, his evolving philosophy about the common law, and his occasional connection to sociological issues.

As to the latter, there are two surprises. First is Blackstone's correspondence with abolitionist Granville Sharp, and second is the absence of any correspondence whatever with Jeremy Bentham. These merit brief explanation.

Granville Sharp was a genuine hero in the long campaign from the 1760s to the 1830s to eradicate slavery in England. His unrelenting and self-sacrificing efforts to achieve justice for individual slaves (as in the landmark 1772 Somerset case) and to effect legislative change (as in coaxing Parliament to regulate the slave trade) are well-known. Sharp's first interaction with Blackstone was one of anger – Sharp was incensed by an alteration that Blackstone made in the second edition of the *Commentaries*. As I and others have recounted,⁴ Blackstone in volume one of his first edition wrote that the moment a slave landed in England, he became '*eo instante* a freeman', but in the second edition he appended the following: 'though the master's right to his service may possibly still continue'. Sharp sent Blackstone two of his own books (see letter 122), and evidently in his transmittal letter expressed indignation about the change. Blackstone replied (letter 124), thanking Sharp for the 'entertainment and instruction' that Sharp had given him, and explaining that a later qualification in volume one to his earlier *eo instante* statement had been misunderstood, so that he found it necessary 'to explain it more fully in subsequent Editions'.⁵ Blackstone then provided additional substantive details. Thereafter, Sharp continued to send Blackstone copies of Sharp's anti-slavery publications, to which Blackstone responded with patience and courtesy (see letters 126, 135, 142).

The absence of Bentham letters is not because no such letters were written. Prest notes in his Introduction (at xiii) that, for a variety of reasons, the letters in his edition may well represent only a fragment of Blackstone's correspondence. Bentham is a case in point. Bentham's fierce criticism of Blackstone's *Commentaries* became notorious, as reflected in two publications, *A Fragment on Government* (published anonymously in 1776) and *A Comment on the Commentaries* (not published until 1928). Blackstone did not consider Bentham's vitriolic critiques to be worthy of epistolary response – as Bentham recorded in his *Historical Preface to the Fragment on Government*, Blackstone, when asked if he intended to make any answer to Bentham's critique, said, 'No, not even if it had been better written.'⁶ Nevertheless Bentham did state in a letter to his old friend, the Rev John Forster, that Blackstone in a new edition made several alterations in

⁴ See eg, J Oldham, *English Common Law in the Age of Mansfield* (2004) 316-18.

⁵ The inconsistency between the first and second passages in volume one of Blackstone's first edition may have been pointed out by Lord Mansfield, Chief Justice of the Court of King's Bench, or by puisne King's Bench justice John Eardley Wilmot. See letter 95; also *English Common Law in the Age of Mansfield*, 316-17.

⁶ See Charles M Atkinson, *Jeremy Bentham His Life and Work* (1905) 70.

consequence of Bentham's work, 'though with but an indifferent grace'.⁷

In his *Historical Preface*, Bentham commented that two years later, he and Blackstone were on better terms due to a common interest in the penitentiary system.⁸ Blackstone worked closely with William Eden, later Baron Auckland, a diplomat and MP, to craft a bill dealing with the transportation of criminals to the colonies, the establishment of Houses of Hard Labour, and regulation of prison ships anchored in the Thames (chillingly called 'the Hulks') (see letter 166). At about the same time, Bentham published his second work, *A View of the Hard Labour Bill*, and he sent copies to Blackstone and Eden. In his *Historical Preface*, Bentham wrote: 'From the Judge I received a note, which still exists, I believe, somewhere', the contents of which Bentham then recorded from memory.⁹ Blackstone did not enter upon a working relationship with Bentham, but they had discovered common ground and may well have corresponded further. Blackstone's continuing work with William Eden, however, is reflected fully in a dozen and a half letters in Prest's edition.¹⁰

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Other letters have revealing content. At age 23, Blackstone wrote to an uncle by marriage (letter 3) about his law studies and, among other musings, described the common law of Littleton's time as an edifice of 'beautiful Symmetry' with all apartments 'leading one into another without Confusion', but subsequently the law had become 'swoln, shrunk, curtailed, enlarged, altered & mangled' so that the harmony of the system was 'quite annihilated: & now it remains a huge, irregular Pile'. This anticipates Blackstone's famous image of the common law in the *Commentaries*, especially as shaped (or corrupted) by legal fictions, as 'an old Gothic castle' with obsolete towers and ramparts, but the 'inferior apartments, now converted into rooms of convenience, are chearful and commodious, though their approaches are winding and difficult'.¹¹

Additional letters of interest to legal historians include 16 (1771 – doldrums in the law courts), 18 (1753 – common versus civil law, the jury as '*de Essentia*' in the common law), 28-29 (1756 – sensitivity concerning transcription of statutes), 64 (1761 – taking silk), 101 (1766 – example of soliciting a judgeship), 128 (1770, after becoming a judge, on whether women or petit larceners fall under the statutory description of those eligible for transportation), 137 (1775 – workload on the western circuit, Lent assizes), 139 (1775 – imposing fines at Lincoln for non-

⁷ See Mary P Mack, *Jeremy Bentham: An Odyssey of Ideas 1742-1792* (1962) 341.

⁸ Atkinson, above n 6, 70.

⁹ Atkinson, above n 6, 71.

¹⁰ See letters 147-151, 153, 158-159, 160-161, 164, 166-167, 171, 174-177. The bill laid out in letter 166 was finally enacted as *The Penitentiary Act*, though much reduced in scope from the original plan. See Doolittle, above n 3, 89.

¹¹ *Commentaries* I: 268. See also the Introduction by John H Langbein to the University of Chicago's facsimile edition, 1979, vol 3, vi.

attendance by summoned jurors), 144 (1778 – potential sale of a 23-volume folio set of *Viner's Abridgement*, 'nearly as good as new', for 30 or 40 pounds), 164 (1779 – puisne judges' salaries), and 155, 171, 176 (1778-79 – dismay at parliamentary politics).

Valuable in its own right, the edition of Blackstone's letters by Wilfred Prest was prepared against the expectation that the full-scale biography would soon follow. Perhaps for this reason, many of the editorial footnotes are brief, limited to identification of recipients of letters or of persons named in the text of the letters. Other notes do give explanatory detail, but the full flavor of Blackstone's life and career is yet to come. We look forward to seeing and absorbing Prest's forthcoming biography, and in the meantime, *The Letters of Sir William Blackstone 1744-1780* is a commendable precursor.

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