

*Blackstone and his Critics*, ed. Anthony Page and Wilfrid Prest (Oxford: Hart, 2018, pp. xxi + 229. £65)

William Blackstone has a place in the pantheon of the common law, but this volume is concerned with his critics. Wilfrid Prest's whirlwind tour in the final chapter demonstrates these were a diverse group spread across time and space.

The twelve chapters cluster in a few thematic groups. The first group analyses Blackstone and his *Commentaries* in context. Ian Doolittle identifies Blackstone as part of an 'Oxford Enlightenment', linking him to Edward Gibbon and Thomas Winchester, on whom the chapter really focuses. Tim Stretton also investigates the idea of Blackstone as an Enlightenment figure, and like Doolittle would have benefited from explaining quite what he takes 'Enlightenment' to mean. Nonetheless, Stretton's chapter is an excellent case study of Blackstone's writing and judicial activity in relation to the common-law rule preventing siblings of the half-blood inheriting from one another. Stretton draws attention to Blackstone's 'intoxication' with mathematics and logic, giving 'Blackstone the appearance of a deer caught in the headlights of Enlightenment logic and rational calculation' (p. 123).

Michael Lobban, meanwhile, assesses Blackstone's originality, highlighting the significant debt owed by Blackstone to other legal writers. He places the

*Commentaries* into a wider collection of eighteenth-century works trying to present the common law in a coherent way. Lobban observes that Blackstone's reliance on earlier writers was so extensive that '[o]nce on unfamiliar ground, Blackstone's treatment was not simply inadequate, but positively misleading' (p. 10).

However, Lobban draws attention to a significant original aspect of Blackstone's work: his attempts to explain the reasons behind the law. Stretton's chapter considers an excellent example. Blackstone provided two reasons for the rule excluding half-bloods from inheritance. Stretton reveals a thin line between explanation and justification. Blackstone thought that once the reasons behind the rule were understood, it would no longer appear to be a 'strange hardship' (p. 118), undermining criticism of it.

This explanatory aspect of Blackstone's work leads into the second group of chapters, those concerned with his (near-)contemporary critics, beginning with a chapter on Jeremy Bentham by Philip Schofield. For Bentham, Blackstone's explanations of the law justified his castigation of 'everything as it should be' Blackstone. Aside from Bentham, the other chapters on contemporary critics were particularly interesting, challenging the very visible success of the *Commentaries* in Blackstone's lifetime.

Anthony Page discusses the reaction to part of the *Commentaries* among rational dissenters. Ministers praised the *Commentaries* in general, but were hostile to Blackstone's view that the 1689 Act of Toleration did not decriminalise protestant non-conformity. Worse than Blackstone's statement of the law was his justification for it, which treated protestant dissenters as no better than Catholics, threatening the established constitution. According to the Philip Furneaux, Blackstone did not understand the principles of protestant dissent. That criticism of lack of understanding was echoed by John Curry, one of the Irish critics of Blackstone discussed by Ultán Gillen. Curry complained that Blackstone did not understand that it was possible for Catholics to be loyal to their country. Despite such criticism, Blackstone was used frequently in Irish debates. Gillen draws attention to the variable use of Blackstone.

The third group of chapters is the most diverse, concerning later critics and uses of Blackstone. There is some expansion beyond the British Isles, albeit only to North America. David Lieberman considers Blackstone's role as example in the nineteenth century, as regular university education in common law began. Lieberman observes that those who made reference to Blackstone's example disagreed with the substance of his work. The same could be said about William Gardiner Hammond, an American law professor, considered by David Rabban. Hammond disagreed (strongly) with much of the substance of the *Commentaries*, but praised them as a project.

The Benthamite criticism of 'everything as it should be' Blackstone reappears in John Orth's chapter on Walter Clark, an avowedly progressive North Carolina judge from the late-nineteenth century. Clark blamed Blackstone's influence on American legal education for the conservatism of the American legal profession as a whole. Nonetheless, as a judge Clark still made use of Blackstone, although Orth highlights that this use was nuanced.

Caroline Steedman's chapter is a reminder that critics should themselves be exposed to criticism. In careful analysis Steedman shows that Blackstone's notorious writing on the law of coverture was not cited frequently in nineteenth century England, nor (unlike some other parts of the *Commentaries*) was it incorporated into wider education. However, Blackstone's texts have become a key reference for historians referring to coverture in the nineteenth century, especially for feminist historians. Steedman attributes this to the influence of American feminist scholarship on English work. The *Commentaries* were more important in practice in the United States, something reflected in the prominence given to the text in early feminist scholarship. That scholarship influenced English scholars, who seem to have relied uncritically upon their American colleagues.

There are unifying threads among these chapters. First is the importance of the quality of Blackstone's prose for his influence (good and bad). Excerpts from

Blackstone made their way into the *Beauties of English Prose*, ensuring a much wider dissemination. Nineteenth-century law professors could praise the *Commentaries'* literary merits even as they disagreed with their substance. For Bentham and Walter Clark, Blackstone's prose was part of the problem. As Clark put it, Blackstone had 'thrown a glamour around the common law' (p. 197), convincing readers of the law's undeserved merits.

Second is how frequently 'Blackstone' or his *Commentaries* really served as a shibboleth for English law more generally. As Schofield notes, Bentham's 'Blackstone familiarized' was part of an 'attempt to undermine the whole political, legal, and ecclesiastical establishment' (p. 25). Gillen observes that Blackstone 'offered the perfect foil for the arguments Sheridan wanted to make' (p. 110). The criticism of Blackstone here is not really of Blackstone, or even his *Commentaries*, but of the system Blackstone described. The same could be said of the feminist scholarship discussed by Steedman.

The final shared theme is the importance of Blackstone to his critics. Schofield observes that without Blackstone, 'there would have been a very different Bentham' (p. 40). Blackstone's writings stimulated rational dissenters to campaign for religious liberty, rather than mere toleration. Gillen notes that engagement with Blackstone by his Irish critics 'helped shape thinking on the major political questions of the era' (p. 115). Despite the criticism, that is an impressive legacy.