

# SIR WILLIAM BLACKSTONE: A LIFE AND LEGACY SET APART FOR GOD'S WORK \*

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No single name shines more brightly in the history of our Anglo-American legal system than that of Sir William Blackstone.<sup>1</sup> He rose from obscurity and difficult beginnings in eighteenth-century England to serve as a lawyer, an Oxford professor, a member of Parliament, and a judge. His four-volume treatise, *Commentaries on the Laws of England*, was a landmark work, immensely popular in England, and even more influential in the American Colonies, where it helped form the foundation for the political and legal structures of the new United States.<sup>2</sup> Pervasive throughout Blackstone's life and work was his reliance on his Christian faith, producing a life and a legacy set apart for God's work.

William Blackstone was born on July 10, 1723, in the Cheapside mercantile district of London.<sup>3</sup> His father, Charles Blackstone, had been the proprietor of a small silk shop there, and the family lived on the second floor over the store.<sup>4</sup> Tragically, Charles fell ill and died before William was born, leaving his widow, Mary, to care for the newborn and his two older brothers.<sup>5</sup> Being a single parent in London in the 1720s was not a prescription for successful family life, but Mary Blackstone apparently rose to the challenge, producing in the person of young William something of a prodigy.<sup>6</sup> Before he reached the age of seven, William Blackstone had read the entire Bible, all the works of Milton, and John Bunyan's classic tale of the Christian's life struggle, *Pilgrim's Progress*.<sup>7</sup> One of William's uncles, a man of some means, took an interest in him and paid for him to be educated at the Charter House

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<sup>1</sup> See generally DAVID A. LOCKMILLER, *SIR WILLIAM BLACKSTONE* viii (1938).

<sup>2</sup> See *id.*

<sup>3</sup> See LEWIS C. WARDEN, *THE LIFE OF BLACKSTONE* 13-15 (1938).

<sup>4</sup> See *id.* at 10-11.

<sup>5</sup> See LOCKMILLER, *supra* note 1, at 4-5.

<sup>6</sup> See WARDEN, *supra* note 3, at 21-25.

<sup>7</sup> See *id.* at 25-26.

School in London, beginning at age seven.<sup>8</sup> Four years later, William Blackstone was left an orphan upon the death of his mother.<sup>9</sup>

Now without living parents, Blackstone by all accounts threw himself into his studies.<sup>10</sup> He excelled in Latin and became intensely interested in poetry. In 1738, at age fifteen, Blackstone was admitted to Pembroke College, Oxford.<sup>11</sup> He continued to study the poets, particularly Shakespeare, as well as mathematics and logic.<sup>12</sup> He developed a special interest in architecture and wrote a competent (albeit unpublished) treatise on that subject before he turned twenty.<sup>13</sup> While at Pembroke, Blackstone considered taking his Christian faith into ministry as a vocation like his two older brothers.<sup>14</sup> In the end, however, it was neither poetry, nor architecture, nor the ministry that called to Blackstone. The law, instead, did so. Blackstone saw his entry into the study of law not as an alternative to Christian ministry, but as itself a type of Christian service.<sup>15</sup> He was inspired to consider the profession of law by a book entitled *Doctor and Student*, a sixteenth-century law text written by Christopher St. Germain, an English lawyer.<sup>16</sup> In passages later echoed by Blackstone's own writings, that book identified God as the source of law and the law of God as the basis for the law of England. One can imagine Blackstone seeing in those concepts the potential fruition of a vocational calling that would combine his Christian faith with the study and practice of law.<sup>17</sup> In 1741, he entered the Middle Temple in London to study law.<sup>18</sup> Two years later he was elected a fellow of All Souls College, Oxford, and, in 1745, he graduated from Oxford with his Bachelor of Civil Laws degree.<sup>19</sup>

It was not without some pain that Blackstone pursued his study of law in place of his first love, poetry. He lamented that transition in a poem he wrote at the time, entitled *A Lawyer's Farewell to His Muse*, which read in part:

How blest my days, my thoughts how free,  
In sweet society with thee!  
Then all was joyous, all was young

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<sup>8</sup> See *id.* at 26.

<sup>9</sup> See LOCKMILLER, *supra* note 1, at 6.

<sup>10</sup> See WARDEN, *supra* note 3, at 28-29.

<sup>11</sup> See *id.* at 31.

<sup>12</sup> See LOCKMILLER, *supra* note 1, at 9-10.

<sup>13</sup> See *id.* at 10.

<sup>14</sup> See WARDEN, *supra* note 3, at 42.

<sup>15</sup> See *id.* at 43.

<sup>16</sup> See *id.*

<sup>17</sup> See generally 1 WILLIAM BLACKSTONE, COMMENTARIES \*38-42.

<sup>18</sup> See LOCKMILLER, *supra* note 1, at 11.

<sup>19</sup> See *id.*

And years unheeded roll'd along:  
 But now the pleasing dream is o'er,—  
 These scenes must charm me now no more:  
 Lost from the field, and torn from you,  
 Farewell!— A long, a last adieu!

. . . No room for peace, no room for you—  
 Adieu, celestial Nymph, Adieu!

Shakespeare no more, thy sylvan son,  
 Nor all the art of Addison,  
 Pope's heaven-strung lyre, nor Waller's ease  
 Nor Milton's mighty self must please . . . .<sup>20</sup>

The same poem reveals, however, an understanding that his new chosen field would be a high and noble calling. Blackstone characterizes Justice as a much-admired queen,<sup>21</sup> then continues:

Oh! Let me pierce the secret shade,  
 Where dwells the venerable maid!  
 There humbly mark, with reverent awe,  
 The guardian of Brittania's law;  
 Unfold with joy her sacred page  
 (The united boast of many an age,  
 Where mix'd though uniform appears  
 The wisdom of a thousand years),  
 In that pure spring, the bottom view,  
 Clear, deep, and regularly true . . . .  
 Observe how parts with parts unite  
 In one harmonious rule of right;  
 See countless wheels distinctly tend,  
 By various laws, to one great end . . . .<sup>22</sup>

William Blackstone, having forsaken his muse, was called to the bar and began practicing law in London in 1746.<sup>23</sup> For the next seven years, he struggled.<sup>24</sup> He had few clients and little success with those he did manage to develop.<sup>25</sup> Apparently, legal work was scarce in that time, and lawyers were abundant.<sup>26</sup> Also, having come from a common background, Blackstone lacked the “connections” vital to a successful law practice.<sup>27</sup> In

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<sup>20</sup> WARDEN, *supra* note 3, at 47, 49-50 (quoting William Blackstone, *A Lawyer's Farewell to His Muse*).

<sup>21</sup> *See id.* at 50.

<sup>22</sup> *Id.* at 50-51.

<sup>23</sup> *See id.* at 64-65.

<sup>24</sup> *See id.* at 65.

<sup>25</sup> *See id.* at 65-67.

<sup>26</sup> *See id.* at 65.

<sup>27</sup> *See id.* at 65-66.

seven years, he only argued three cases.<sup>28</sup> His frustration during this time was perhaps presaged by him in his earlier poem:

The wrangling courts, and stubborn law,  
To smoke, and crowds, and cities draw;  
There selfish Faction rules the day,  
And Pride and Avarice through the way;  
Diseases taint the murky air,  
And midnight conflagrations glare.<sup>29</sup>

But Blackstone persevered, humbly taking whatever minor legal matters came his way.<sup>30</sup> He spent large amounts of time sitting in the courts, taking notes on the judges' rulings and building a reservoir of legal knowledge that was one day to bear fruit of historic proportions.<sup>31</sup>

While doggedly pursuing the practice of law, Blackstone continued to develop his close relationship with Oxford. He was elected treasurer and bursar of All Souls College in 1746.<sup>32</sup> He continued his studies at Oxford and in 1750 was awarded the Doctor of Law degree.<sup>33</sup> After a few more years of failing at the practice of law, Blackstone gave it up altogether in 1753.<sup>34</sup> In that year, he applied for but did not receive an appointment to a vacant law professorship at Oxford.<sup>35</sup> At that point, he made a decision that was to change the course of his life and, indeed, of Anglo-American legal history.

In eighteenth-century Europe, two types of legal systems existed. On the continent, the dominant legal system was civil law, a system based largely on imperial Roman Law and embodied in statutory enactments. In England, however, the dominant legal system was the common law, "[t]hat ancient collection of unwritten maxims and customs," a set of traditions and judicial precedents handed down by courts over the centuries.<sup>36</sup> Oddly enough, even though England operated under the common law, only the civil law was taught to law students at British universities.<sup>37</sup>

In 1753, Blackstone decided to offer a series of lectures at Oxford on the common law, later opining that "[s]urely, if it were not before an object of academical knowledge, it was high time to make it one."<sup>38</sup> In his

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<sup>28</sup> See *id.* at 65.

<sup>29</sup> *Id.* at 49.

<sup>30</sup> See *id.* at 68.

<sup>31</sup> See LOCKMILLER, *supra* note 1, at 54.

<sup>32</sup> See *id.* at 24.

<sup>33</sup> See *id.* at 28-29.

<sup>34</sup> See WARDEN, *supra* note 3, at 93.

<sup>35</sup> See LOCKMILLER, *supra* note 1, at 37-38.

<sup>36</sup> *Id.* at 212.

<sup>37</sup> See WARDEN, *supra* note 3, at 150.

<sup>38</sup> LOCKMILLER, *supra* note 1, at 221.

introductory lecture, he explained why he felt it important for the people of England to understand the common law:

No man is more thoroughly persuaded of the general excellence of [the civil law's] rules, and the usual equity of its decisions, nor is better convinced of its use as well as ornament to the scholar, the divine, the statesman, and even the common lawyer. But we must not carry our veneration so far as to sacrifice our Alfred and Edward to the manes of Theodosius and Justinian; we must not prefer the edict of the praetor, or the rescript of the roman emperor, to our own immemorial customs or the sanctions of an english parliament; unless we can also prefer the despotic monarchy of Rome and Byzantium, for whose meridians the former were calculated, to the free constitution of Britain, which the latter are adapted to perpetuate.

Without detracting therefore from the real merits which abound in the imperial law, I hope I may have leave to assert, 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 that society in which we live, is the proper accomplishment of every gentleman and scholar; and highly useful, I had almost said essential, part of liberal and polite education.<sup>39</sup>

Blackstone's lectures on the common law were popular and well-attended and continued for many years.<sup>40</sup> The project was given fresh impetus in 1756 upon the death of one Charles Viner, who left a bequest to Oxford to establish a professorship of English law.<sup>41</sup> In 1758, William Blackstone was unanimously elected to be the first Vinerian Professor of the English common law.<sup>42</sup> It was the first professorship anywhere devoted to the teaching of the common law.<sup>43</sup>

Ironically, it was after Blackstone became established as a law professor at Oxford that he began to experience the success as a practicing lawyer that had previously eluded him. From 1760 to 1762 he developed a prosperous appellate practice, and in 1763 he was appointed Solicitor-General to Her Majesty.<sup>44</sup> His practice became so prosperous that he resigned his professorship in 1766, and from then until 1769 he was busy with a full-time case load.<sup>45</sup>

During all these years, Blackstone's personal life was a testimony to his Christian character. As to the foundations of his faith, one biographer reported:

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<sup>39</sup> *Id.* at 199, 201.

<sup>40</sup> *See id.* at 41-44.

<sup>41</sup> *See id.* at 44.

<sup>42</sup> *See id.* at 45-46.

<sup>43</sup> *See id.* at 46.

<sup>44</sup> *See id.* at 61-67.

<sup>45</sup> *See id.* at 68.

The method by which he decided that the Church of England's Christianity was the religion for him was just as rigorous and analytical as if he were analyzing a legal issue; he refused to accept any of the doctrines until after he had investigated them and wrestled with them mentally and spiritually.<sup>46</sup>

He frequently took his future wife, Sarah, with him to church while they were courting, and in 1761 they married.<sup>47</sup> Together they raised seven children, devoting them early to Christian education.<sup>48</sup> The Blackstones were faithful members of St. Peter's church in Wallingford, where they maintained their country home.<sup>49</sup> William Blackstone led and helped fund a campaign to rebuild and restore St. Peter's.<sup>50</sup> According to a contemporary, Blackstone was "a faithful friend; an affectionate husband and parent; and a charitable benefactor to the poor; possessed of generosity, without affectation, bounded by prudence and oeconomy."<sup>51</sup>

At least in part because pirated copies of his common-law lectures were surfacing in many parts of the English-speaking world, Blackstone began to feel a need to create his own written version of those lectures.<sup>52</sup> In 1756, he wrote a syllabus of the lectures entitled *An Analysis of the Laws of England*.<sup>53</sup> Finally, in 1765, Blackstone published the first volume of his *Commentaries on the Laws of England*.<sup>54</sup> Over the next four years, he completed and published the remaining three volumes of the *Commentaries*.<sup>55</sup> They were immediately successful and popular.<sup>56</sup> In these works, Blackstone sought to categorize, explain, and trace the history of the major English common-law doctrines, including individual rights, the role and structure of government, family law, corporate law, property and estates, court procedure, tort law, contracts, and criminal law.<sup>57</sup> To read the contents of the *Commentaries* is to see a picture of a course of study that remains at the foundation of Anglo-American legal education to this day.

The substance of Blackstone's *Commentaries* was not wholly original nor especially creative. His genius was in his ability to categorize, clearly explain, and make the law accessible. Most

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<sup>46</sup> WARDEN, *supra* note 3, at 88.

<sup>47</sup> *See id.* at 234, 237.

<sup>48</sup> *See id.* at 244-46.

<sup>49</sup> *See id.* at 198, 201-05.

<sup>50</sup> *See* LOCKMILLER, *supra* note 1, at 75-76.

<sup>51</sup> *Id.* at 86 (citation omitted).

<sup>52</sup> *See id.* at 133.

<sup>53</sup> *See id.* at 43.

<sup>54</sup> *See id.* at 133.

<sup>55</sup> *See id.* at 134.

<sup>56</sup> *See id.* at 156.

<sup>57</sup> *See* BLACKSTONE, *supra* note 17, *passim*.

importantly, the *Commentaries* articulated a thoroughly Christian jurisprudence. Blackstone identified God as the source of law: “[m]an, considered as a creature, must necessarily be subject to the laws of his creator, for he is entirely a dependent being. . . . This will of his maker is called the law of nature.”<sup>58</sup> Blackstone went on to express the primacy of God’s law:

This law of nature, being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.<sup>59</sup>

In addition to the law of nature, Blackstone identified “the revealed or divine law,” defined as those specific legal rules and principles found in the Bible.<sup>60</sup> He concluded, “Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these.”<sup>61</sup> Not surprisingly, it is reported that the Bible was Blackstone’s “constant companion” while he wrote the *Commentaries*.<sup>62</sup>

Blackstone was not content that he should serve God, nation, and the law only as a successful practicing lawyer, an innovative academic, or a renowned author. In 1761, he was elected to Parliament, where he served until 1770.<sup>63</sup> He viewed the legislative role as one of high importance, writing that legislators

are the guardians of the English constitution; the makers, repealers, and interpreters of the English laws; delegated to watch, to check, and to avert every dangerous innovation, to propose, to adopt, and to cherish any solid and well-weighed improvement; bound by every tie of nature, of honour, and of religion, to transmit that constitution and those laws to posterity.<sup>64</sup>

He was perhaps surprisingly inactive as a legislator, but his veneration of the common law helps explain his approach:

The mischiefs that have arisen to the public from inconsiderate alterations in our laws, are too obvious to be called in question; and how far they have been owing to the defective education of our senators, is a point well worthy the public attention. The common law

<sup>58</sup> 1 *id.* at \*39.

<sup>59</sup> 1 *id.* at \*41.

<sup>60</sup> 1 *id.* at \*42.

<sup>61</sup> 1 *id.*

<sup>62</sup> WARDEN, *supra* note 3, at 153.

<sup>63</sup> See LOCKMILLER, *supra* note 1, at 62.

<sup>64</sup> William Blackstone, *A Discourse on the Study of the Law; Being an Introductory Lecture Read in the Public Schools, October XXV, M.DCC. LVIII (1758)*, reprinted in LOCKMILLER, *supra* note 1, at 205.

of England has fared like other venerable edifices of antiquity, which rash and unexperienced workmen have ventured to new-dress and refine, with all the rage of modern improvement. Hence frequently its symmetry has been destroyed, its proportions distorted, and its majestic simplicity exchanged for specious embellishments and fantastic novelties. For, to say the truth, almost all the perplexed questions, almost all the niceties, intricacies, and delays, (which have sometimes disgraced the english, as well as other, courts of justice) owe their original not to the common law itself, but to innovations that have been made in it by acts of parliament.<sup>65</sup>

In 1770, Blackstone was knighted by King George III and then undertook his final role of service as a judge on the Court of Common Pleas.<sup>66</sup> He was a conservative judge, for again he was driven by his common-law convictions:

For it is an established rule to abide by former precedents, where the same points come again in litigation; as well to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion; as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent judge to alter or vary from, according to his private sentiments: he being sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one.<sup>67</sup>

Blackstone's years on the bench were characterized by thoughtful, careful, and well-written judicial opinions. His dissenting opinion in *Scott v. Shepherd*,<sup>68</sup> the famous "lighted squib" case, is still today read by great numbers of first-year law students in their torts courses.

Even those of sterling character have certain points of weakness; Blackstone's were a fondness for food and an aversion to exercise.<sup>69</sup> In his later years he was overweight and in ill health, suffering from gout and vertigo.<sup>70</sup> He died in 1780.<sup>71</sup>

Eight editions of the *Commentaries on the Laws of England* appeared during Blackstone's lifetime.<sup>72</sup> They were well-received in England, though not without some criticism.<sup>73</sup> They were wildly

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<sup>65</sup> *Id.* at 205-06.

<sup>66</sup> See LOCKMILLER, *supra* note 1, at 106-08.

<sup>67</sup> 1 BLACKSTONE, *supra* note 17, at \*69.

<sup>68</sup> 96 Eng. Rep. 525 (K.B. 1773).

<sup>69</sup> See WARDEN, *supra* note 3, at 248-49.

<sup>70</sup> *See id.* at 250.

<sup>71</sup> *See id.* at 407.

<sup>72</sup> See LOCKMILLER, *supra* note 1, at 156.

<sup>73</sup> *See id.* at 158.

successful, however, in the American Colonies.<sup>74</sup> Hundreds of copies of early editions of the *Commentaries* were imported to the Colonies.<sup>75</sup> In 1771, the first American edition was printed, and its list of initial subscribers included many Colonial governors and sixteen later signers of the Declaration of Independence, including future president John Adams.<sup>76</sup> It is thus not surprising that Blackstone's discussion of individuals' "absolute rights, which were vested in them by the immutable laws of nature,"<sup>77</sup> finds its echo in the Declaration of Independence: "all men are . . . endowed by their Creator with certain unalienable rights."<sup>78</sup> Blackstone's *Commentaries* were the primary source of legal education for generations of American lawyers and continued to be used as a law school textbook into the twentieth century.<sup>79</sup>

What can we learn today from Sir William Blackstone and of what significance to us is his life? We see a man of common birth and low station, born to a widow, orphaned at an early age. Resisting what might be seen as a modern tendency to assume the status of a victim, he lifted himself up by means of an education centered upon the Bible and other Christian classics. He heeded a call to the law and pursued it wherever it led, always actuated by his strong Christian faith. His life was marked by a breadth of service to his profession matched by few: practicing lawyer, law professor, scholar and writer, legislator, and judge. Blackstone's greatest contribution, however, and the one for which he is justly venerated, remains his *Commentaries on the Laws of England*. In his work, the English heritage of the common law came into sharp focus for the first time. When the American Colonies received the English common law as their own, they very consciously adopted the Blackstonian view: God as the ultimate source of law, God's law as transcendent over man's law, and a Biblical world-view as the well-spring of all legal knowledge. This firm foundation for our legal heritage is the legacy of Sir William Blackstone.

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<sup>74</sup> See *id.* at 169-70.

<sup>75</sup> See *id.* at 170.

<sup>76</sup> See WARDEN, *supra* note 3, at 322-23.

<sup>77</sup> 1 BLACKSTONE, *supra* note 17, at \*124.

<sup>78</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

<sup>79</sup> See LOCKMILLER, *supra* note 1, at 176-77.