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“CATCH A FALLING STAR”: THE BLUEBOOK AND CITING BLACKSTONE’S COMMENTARIES[†]

John V. Orth*

Sir William Blackstone’s four-volume *Commentaries on the Laws of England*, first published in 1765–1769, is one of the most frequently cited books in the history of the common law. In America, from the eighteenth-century debates over ratification of the U.S. Constitution¹ to twenty-first century U.S. Supreme Court decisions,² Blackstone has been repeatedly recognized as an authoritative source for English law. Generations of editors have kept his book continually in print, regularly updating it with scholarly notes.³ So many editions of the *Commentaries* appeared over the years that a special citation form emerged. From the first edition of the *Bluebook* in 1926 to the present, citations of the *Commentaries* have been to the “star page.” Rule 15.8(b) in the *Bluebook*’s twentieth edition (2015) is the latest iteration:

In a very few well-known works, the page of the original edition (star page) is indicated, usually by an asterisk (*), in either the margin or the text of all recent editions. In such cases the date and edition may be omitted and the citation may be made to the star page, unless the material cited was inserted by the editor of the cited edition.⁴

[†] Part of the article has appeared in John V. Orth, *Blackstone*, in THE OXFORD HANDBOOK OF LEGAL HISTORY (Markus D. Dubber & Christopher Tomlins eds., 2018).

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1. See Horst Dippel, “Blackstone’s Commentaries and the Origins of Modern Constitutionalism,” in RE-INTERPRETING BLACKSTONE’S COMMENTARIES: A SEMINAL TEXT IN NATIONAL AND INTERNATIONAL CONTEXTS 199, 201 (Wilfrid Prest ed. 2014) (“Not only did Blackstone’s name turn up repeatedly [at the Virginia ratifying convention], but he was often quoted verbatim, suggesting that copies of the *Commentaries* were indeed readily at hand.”).

2. E.g., *District of Columbia v. Heller*, 554 U.S. 570, 593–94 (2008) (describing Blackstone’s *Commentaries* as “the preeminent authority on English law for the founding generation” (quoting *Alden v. Maine*, 527 U.S. 706, 715 (1999)). See generally Jessie Allen, *Reading Blackstone in the Twenty-First Century and the Twenty-First Century Through Blackstone*, in RE-INTERPRETING BLACKSTONE’S COMMENTARIES 215 (2014).

3. For information on many of Blackstone’s American editors, see Michael Hoeflich, *American Blackstones*, in BLACKSTONE AND HIS COMMENTARIES: BIOGRAPHY, LAW, HISTORY 171 (Wilfrid Prest ed., 2009).

4. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R.15.8(b), at 155 (Columbia Law Review Ass’n et al. eds., 20th ed. 2015).

Through twenty editions over almost a century, the *Bluebook* has illustrated this rule with a single example, a citation to Blackstone's *Commentaries*.⁵

Over the years after 1769 Blackstone periodically produced new editions of the *Commentaries* until the eighth edition in 1778, and was at work on a further edition when he died in 1780. A posthumous edition, the ninth, advertised as including Blackstone's final corrections, was published in 1783 with marginal notes by Richard Burn.⁶ Two further editions appeared until in 1793 Edward Christian published a twelfth edition of the *Commentaries*, indicating that "the pages of the former editions are preserved in the margin"⁷—the beginning of the star pages.

Nearly two hundred years later, in 1979, the University of Chicago Press published an edition of Blackstone's *Commentaries* described as a "facsimile of the first edition of 1765–1769." More precisely, the Chicago Blackstone is a facsimile of the first editions of each of the four volumes: volume one (1765), volume two (1766), volume three (1768), and volume four (1769). Blackstone published a second edition of volume one in 1766 and a third edition of volume one in 1768. In 1767 he published a second edition of volume two; in 1768 a third edition of volume two. In 1769, when volume four was published, the four volumes were issued as a set and labelled the "fourth edition."⁸

By reprinting the first edition, the Chicago Blackstone necessarily ignores Blackstone's second (and subsequent) thoughts. For example, shortly after the publication of volume one in 1765, the adoption of the Stamp Act precipitated a confrontation with the American colonies. By then a Member of Parliament and loyal supporter of the Tory cause, Blackstone hastened to clarify the constitutional position by inserting in the next edition a summary of the Act which declares "that all his majesty's colonies and plantations in America have been, are, and of right ought to be, subordinate to and dependent upon the imperial crown and parliament of Great Britain."⁹

The most notorious example of Blackstone's revisions involves the seemingly technical question of eligibility for election to parliament, which unexpectedly became a major political issue in the case of the trouble-making John Wilkes. Speaking in the House of Commons in 1769 in support of the government's refusal to recognize Wilkes's re-election after expulsion, Blackstone was confounded when Wilkes's supporters quoted his book against him: "every subject

5. While the exact form has varied slightly over the years, the example has consistently been to a page (or pages) in volume 2 of the *Commentaries* – most recently 2 William Blackstone, *Commentaries* *152, *155-56. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R.15.8(b), at 155 (Columbia Law Review Ass'n et al. eds., 20th ed. 2015).

6. 1 William Blackstone, *Commentaries* (Richard Burn ed. 1783) xi ("ADVERTISEMENT concerning this ninth edition").

7. 1 William Blackstone, *Commentaries* (Edward Christian ed. 1793) ix. In fact, as F[rederick] P[ollock] explained in a note in 22 LAW Q. REV. 356 (1906), Christian preserved the paging of the tenth edition (1787), "which corresponds nearly but not quite with that of the 9th ed."

8. "[T]here was no second or third edition of volumes three and four." FREDERICK HICKS, MEN AND BOOKS FAMOUS IN THE LAW 120 (1921).

9. 1 William Blackstone, *Commentaries* *109.

of the realm is eligible [for election] of common right,” subject only to nine specific disqualifications – not including expulsion.¹⁰ Blackstone promptly got an author’s revenge by qualifying that statement in the next edition: “though there are instances, wherein persons in particular circumstances have forfeited that common right, and have been declared ineligible for that parliament by a vote of the house of commons.”¹¹

Most of Blackstone’s revisions did not involve high politics but more mundane legal issues, for example Blackstone’s description of the estate of tenancy by the entirety, the common law marital estate:

[I]f an estate in fee be given to a man and his wife being considered as one person in law, they cannot take the estate by moieties [separate shares], but both are seised of the entirety, *per tout et non per my* [by the whole and not by the share], the consequence of which is, that neither the husband nor the wife can dispose of any part without the assent of the other, but the whole must remain to the survivor.¹²

Not included in earlier editions of the *Commentaries*, quite possibly because the logical Blackstone had remained uncertain throughout his life how to accommodate the estate with two owners which largely functioned as a sole estate, the sentence appeared only in the posthumous ninth edition.¹³ Needless to say, neither this nor any other of Blackstone’s qualifications or additions can be found in the Chicago Blackstone.

This difficulty led one exasperated scholar in 1996 to call for “an accessible but more carefully prepared edition of the *Commentaries*.”¹⁴ In 2016, Oxford University Press seemed to answer that call with a meticulously prepared edition of the *Commentaries*.¹⁵ It sets the text in readable modern font, explains Blackstone’s telegraphic footnote citations, and expands his brief index. It includes a valuable introduction by the general editor, Blackstone’s distinguished biographer Wilfrid Prest, and each volume is introduced by a leading scholar: David Lemmings (vol. I on the rights of persons), Simon Stern (vol. II on the rights of things), Thomas Galanis (vol. III on private wrongs), and Ruth Paley (vol. IV on public wrongs). But like the Chicago Blackstone, the Oxford Blackstone reprints the first edition of each volume. Unlike the Chicago Blackstone, however, the Oxford Blackstone is a variorum edition; that is, it includes at the end of each volume all the changes Blackstone introduced in later editions (*varia*).

While including all Blackstone’s revisions, the Oxford Blackstone is nearly impossible to correlate with the star edition. One must first know that the star edition incorporates a revision, not something normally indicated; in addition, one must know on which page of the first edition of each volume the revision was inserted. For example, the revision made in response to the Stamp Act,

10. 1 William Blackstone, *Commentaries* *170 (Chicago ed.).

11. 1 William Blackstone, *Commentaries* *176 (italics omitted).

12. 2 William Blackstone, *Commentaries* *182.

13. See generally John V. Orth, *Tenancy by the Entirety: The Strange Career of the Common Law Marital Estate*, 1996 BYU L. REV. 35.

14. Albert Alschuler, “Rediscovering Blackstone,” 145 U. PA. L. REV. 1, 3 n.4 (1996).

15. Oxford Edition of Blackstone (Wilfrid Prest ed. 2016).

which appears on page *109 in the star edition of volume one, was inserted in the first edition of volume one on page 105; in the Oxford Blackstone it appears among the varia on page 327 of volume one. The revision made in response to the controversy surrounding John Wilkes, concerning eligibility to re-election to parliament after expulsion, which appears on page *176 in the star edition of volume one, was inserted in the first edition of volume one on page 170; in the Oxford Blackstone it appears among the varia on page 339 of volume one. And although the key sentence on tenancy by the entirety, which appears on page *182 of volume two in the star edition, was inserted on the same page in the first edition of volume two, in the Oxford Blackstone it appears among the varia on page 379 of volume two.

In all, the varia cover 191 pages in the Oxford Blackstone: in volume one, 63 pages; in volume two, 34 pages; in volume three, 32 pages; in volume four, 62 pages. Some of Blackstone's revisions involve minor stylistic changes; some correct errors, large and small; some add significant material to account for developments over the years after 1765. Any significant additions affect subsequent page numbers. While all of the revisions appear in the text of the star edition, none of them appear in the text of the Oxford Blackstone. To find them, one must know where to search among the varia in the back of each volume.

To complicate matters further, the numbers that appear at the top of each page in the Oxford Blackstone do not correspond with the page numbers in the first editions; these are indicated in the margin. Obviously, this can lead to confusion with the star edition, in which the pagination in the margin (or in brackets in the text) is to the last edition. (Law review editors take note!) Unfortunately, neither the Chicago Blackstone nor the Oxford Blackstone obviates the need to continue to cite the star page, easily located in any of the traditional editions of the *Commentaries* in law libraries or online.