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Blackstone as Architect:
Constructing the *Commentaries*

Wilfrid Prest*

On January 28, 1746, as Cumberland's forces pursued the retreating Jacobite army into Scotland, a twenty-three year old newly-minted Bachelor of Civil Law and junior fellow of All Souls College sat down to write a characteristically cheerful letter to his lawyer uncle Seymour Richmond, shortly after reaching "my new Habitation (which is at Mr Stoke's a Limner in Arundel St)." In the light of what is becoming clear about William Blackstone's own accomplishments and interests in draftsmanship and the visual arts, his choice of London lodgings was perhaps not entirely accidental. Be that as it may, this report on what was seemingly Blackstone's first serious encounter with the common law (even though he had by now accumulated a full five years' standing at the Middle Temple), exudes a jaunty self-confidence, couched in topically martial language: "I have stormed one Book of Littleton, & opened my Trenches before ye 2d; and I can with Pleasure say I have met with no Difficulty of Consequence . . . ." Having established that even the

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* Australian Research Council Australian Professorial Fellow, University of Adelaide. This paper is part of *William Blackstone: Life and Works*, an Australian Research Council Discovery Project (DP0210901) at the University of Adelaide which aims to produce a full-length biography, together with annotated editions of Blackstone's correspondence and architectural writings. Preliminary versions were presented from 1998 onwards to audiences at the University of South Australia, the National Humanities Center, the Australian and New Zealand Law and History Conference, the Australian Modern British History Conference (La Trobe University), the British Legal History Conference (University of Wales, Aberystwyth), the Law and Public Affairs Seminar, Princeton University, the Yale Legal History Forum, and a conference on "Enlightenment Law and Lawyers" at Glasgow University. I am most grateful to Lloyd Bonfield, John Cairns, Morris Cohen, John Foster, Dale Kent, Chris Eisgruber, Sabina Flanagan, Bill Jordan, Stan Katz, Colin Kidd, Peter Lake, Jonathan Lamb, John Langbein, David Lemmings, Michael Lobban, Tony Radford, Peter Scriver, Wendie Schneider, and Simon Stern for comments and suggestions arising from those occasions. Thanks are also due to the editorial staff of the *Yale Journal of Law & the Humanities* and to the archivists and librarians who have kindly assisted my research in America, Australia, and Britain.

common law's notoriously arid mysteries held no terrors for a person of his intellectual precocity, William went on to muse in more general terms about the nature of the body of knowledge with which he was now becoming acquainted, as it would seem for the first time:

I have sometimes thought that ye Common Law, as it stood in Littleton's Days, resembled a regular Edifice where ye Apartments were [purposedly: word crossed through] disposed, leading one into another without Confusion, where every part was subservient to ye whole, all uniting in one beautiful Symmetry, & every Room had its distinct Office allotted to it. But, as it is now, swoln, shrunk, curtailed, enlarged, altered & mangled by various & contradictory Statutes &c; it resembles ye same Edifice, with many of its most useful Parts pulled down, with preposterous Additions in other Places of different Materials & coarse Workmanship according to Whim, or Prejudice, or private Convenience of ye Builders. By which means the Communication of ye Parts is destroyed, & their Harmony quite annihilated; & now it remains a huge, irregular Pile, with many noble Apartments, tho' awkwardly put together, and some of them of no visible Use at present. But if one desires to know why they were built, to what End or Use, how they communicated with ye rest & ye like; he must necessarily carry in his Head ye Model of ye old House, which will be ye only Clew to guide him thro' this new Labyrinth.²

This passage bears quoting at length, if only to indicate the remarkably detailed elaboration of its extended architectural metaphor, which to the best of my knowledge is unique, both in terms of scale and concrete specificity, among the writings of English common lawyers between the sixteenth and eighteenth centuries. True, William Lambard opened the dedicatory epistle of his Archaionomia with an extended figure of speech comparing laws to the walls of a city,' while Sir Edward Coke famously pronounced in his First Institutes that "the knowledge of the law is like a deepe well, out of which each man draweth according to the strength of his understanding,"⁴ and Matthew Hale's posthumously published

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2. Letter from William Blackstone to Seymour Richmond (Jan. 28, 1745/6) (on file with the Harvard Law School Library, Small Manuscript Collection), reprinted in JURISPRUDENT, July 9, 1831, at 394-95. My dating of January 23, 1746, assumes that the author was using the Old Style (Julian) calendar, which was not discarded in England until 1752.


History of the Common Law of England refers to the “common law” as “the complection and Constitution of the English Commonwealth.” But these are little more than passing allusions and figures of speech, comparable to (if more approbatory than) the title of John Arbuthnot’s extended political satire of 1712, *Law Is a Bottomless Pit*, or the proverbial likening of law to a cobweb, in which flies are caught but hornets go free, or alternatively where lawyer-spiders trap client-flies. Slightly closer to the point is a passage from *Law or a Discourse Thereof* by Henry Finch, a work which Blackstone himself would later single out as “a treatise of a very different character” from all its predecessors, due to Finch’s “happy progress in reducing the elements of the law from their former chaos to a regular methodical science”?: “He that will take the whole body of the law before him, and go really and judicially to work, must not lay the foundation of his building in estates, tenures, the gift of writ and such like, but at those current and sound principles our bookes are full of.”

Yet even this, although nearer the form and sense of Blackstone’s analogy, is an isolated departure from the usual practice of English legal writers of the period, who generally and typically refer to the common law in less imaginative, more abstract or prosaic terms, as a body of rules or precepts, compounded of custom, statute, judicial and professional learning, and reason, reflecting more or less closely the law of nature and nations. Even the Yorkshire gentleman-lawyer Christopher Tancred invoked only a loose metaphorical association between laws and buildings when he made the claim that it is, “as absurd to think, that an antient Structure of human laws shou’d be as compleat as those of later date, so much to be improv’d by long experience, as that a House, contriv’d after the Old Fashion, can

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8. HENRY FINCH, LAW, OR A DISCOURSE THEREOF 5 (London, Society of Stationers 1625). A very similar law-French passage occurs in Finch’s earlier NOMOTECHNIA; CESTASCAVOIR, UN DESCRIPTION DEL COMMON LEYS DANGLETERR, at fol.3 (London, Society of Stationers 1613).

9. As Michael Lobban has reminded me, Blackstone himself also speaks of the law in these terms. See 1 WILLIAM BLACKSTONE, COMMENTARIES *38-*92.
compare for Beauty and Convenience with the present modern Architecture.”\(^{10}\)

This paper aims to outline the nature and scope of Blackstone’s architectural interests and to provide some tentative evaluation of their significance for our understanding of his life, thought, and writings. As will become apparent from Part II below, the architectonic analogy employed at the outset of Blackstone’s common law studies was something more than mere ornament or literary conceit. But before venturing into that hitherto unexplored territory, some historiographical background may be helpful.

I

The past quarter-century has seen the emergence and acceptance of numerous interdisciplinary approaches to the history of law and legal institutions, coupled with a markedly greater willingness on the part of historians to take into account and come to terms with the law’s cultural, economic, political, and social dimensions. Yet historical accounts of law still often continue to be relegated to the category “legal history,” conceived of as a marginal specialist sub-discipline dominated (at least numerically) by antiquarian lawyers and legal academics. And while social and cultural historians have paid considerable attention to the history of crime and criminals, the law’s broader and more fundamental role in mediating social relations through its prescription and resolution of civil rights and responsibilities apparently still fails to attract much interest or notice from the ranks of general historians.

Closer integration of the history of law with the general history of a particular time and place can yield considerable intellectual benefits, as is plainly apparent in some recent overviews of Hanoverian England which do take the law seriously.\(^{11}\) But while an increasing accumulation of published research illuminates aspects of eighteenth-century English law in action,\(^{12}\) such specialist knowledge

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has as yet made relatively little impact on historical interpretation and understanding of the era as a whole. So we may well join with David Lemmings, historian of the eighteenth-century English bar, in regretting the "absence of significant attention to law... from recent accounts of the state and national consciousness."13

One underlying reason for this omission, or oversight, may be the somewhat abstract, generalized, and quantitative nature of much of the historical argument and evidence presented to date, as also the conclusions drawn from it. Certainly those individual eighteenth-century English persons, whether clients or practitioners, who availed themselves of the law—or alternatively were caught up in its (non-criminal) clutches—have on the whole been poorly served by historians and biographers, especially given the plethora of published lives and times of politicians, churchmen, soldiers, sailors, scientists, and scholars who were their contemporaries. Nowhere is this shortcoming more blatant than in the case of William Blackstone.

Michael Meehan has pointed out that although written as "mere textbook," Blackstone's Commentaries were very quickly "ushered, with virtually the authority and symbolic status of a legal code, into the canonical realms of legal authority, and to the heart of the Anglo-American lex non scripta..."14 By providing student and general reader alike with an accessible yet authoritative guide to the common law's complexities, this "most correct and beautiful outline that ever was exhibited of any human science"15 (to quote the Orientalist lawyer William Jones, one of many contemporary enthusiasts) played a key role in transforming legal education from writ-based apprenticeship to rights-based academic process.16 More important, in the longer term the Commentaries helped ensure the transmission of common-law based constitutional and juristic structures to Britain's settler colonies in North America and the South Pacific. More than twenty English and Irish editions of the Commentaries had appeared by the middle of the nineteenth century, with nearly 100 American editions, abridgements, and

15. WILLIAM JONES, AN ESSAY ON THE LAW OF BAILMENTS 3-4 (London, J. Nichols for Charles Dilley 1781). Jones's purpose was, however, to supplement Blackstone's three paragraphs on bailments, "which without affecting the merit of his incomparable work, we may safely pronounce the least satisfactory part of it." Id. at 3.
summaries before the century was out. Besides inspiring a new breed of legal textbook on both sides of the Atlantic, Blackstone's *Commentaries* continued to be taught in American law schools well into the twentieth century.

The contemporary impact and persistent influence of Blackstone's greatest work are both indisputable and difficult to exaggerate, even despite the lack of consensus among historians, lawyers, and philosophers on its interpretation and overall significance. But the person who compiled these remarkable volumes remains a distant and elusive figure, largely neglected by biographers and historians. There are various possible explanations. A life sketch by his brother-in-law James Clitherow, purportedly based on an autobiographical outline which the subject himself supplied, appeared in 1781, the year following Blackstone's death, as a preface to his *Reports*. In the absence of any substantial surviving collection of personal or family papers, the authority of Clitherow's blandly pious memoir was not easily challenged. At the same time, it provided no effective counter to the devastating portrayal of a shallow apologist for the status quo, "so great an enemy of all reform," "everything-as-it-should-be Blackstone," propagated by Jeremy Bentham, a former student who became Blackstone's harshest and least forgiving critic. The apparent dispersal of Blackstone's personal and family papers and the consequent lack of a Blackstone archive have also doubtless deterred potential biographers, despite the shortcomings both of Clitherow's idealized family portrait and the one-dimensional caricature of failed barrister turned stodgy Tory apologist for Britain's constitution and the common law, which largely replaced it during the century after Blackstone's death.

Until very recently the only published monographic studies of the life of a man whose contemporary standing and subsequent influence arguably rank him alongside such luminaries as Edward Gibbon and Adam Smith were two compilations based overwhelmingly on printed sources by the lawyer-historian D.A. Lockmiller and the lawyer L.C. Warden, which appeared in quick succession over sixty


Neither of these discursive eulogies adds much by way of either information or interpretation to the late Victorian memoir written for the *Dictionary of National Biography* by the journalist G.P. Macdonell, itself a mildly iconoclastic exercise in the nineteenth-century legal positivist strain, following Bentham and his disciples in tending to discount Blackstone as a confused reactionary. More recently, in 1982, Dr. Ian Doolittle published a substantial article, incorporating much newly-discovered evidence to which he had been pointed by the late Dame Lucy Sutherland, as the first step toward producing a full biography, but then he himself turned to full-time legal practice. We now have, nearly two decades later, a self-published condensation of the fruits of Doolittle's protracted research. Written from a largely legal and political perspective, these 112 pages constitute the most substantial life history produced to date. The brevity of his book and the circumstances of its production make it hardly surprising that the author was unable in some cases to consult and in others to give more than fleeting attention to surviving manuscript material which has the potential to cast considerable light on Blackstone's life and thought. If he does not fully succeed in presenting a comprehensive portrait of the man in his times, Doolittle's biography nevertheless constitutes an invaluable reference and starting point for future work.

What form should that work take? Notwithstanding Doolittle's labors, Blackstone's life story and personality remain largely overshadowed by the authorship of his great book. Yet over his relatively brief life span of fifty-six years, even the bare outline of Blackstone's career reveals an extraordinarily diverse range of accomplishments, activities, and interests as poet, bibliophile, critic, and legal scholar.

20. David A. Lockmiller, *Sir William Blackstone* (1938); Lewis C. Warden, *The Life of Blackstone* (1938). Lockmiller, whose book is the more substantial of the two, explains in his preface that he received a copy of Warden's text while his own was "being considered by the publisher .... A careful examination of this work convinced me that my manuscript should be published without delay." *Id.* at viii.


historian, comparative theologian, literary critic, linguist and scholar, academic administrator and national politician, legislator, law and penal reformer, law reporter, judge, and—not least for present purposes—architect. While his authorship of the *Commentaries* is the central fact of Blackstone's life, ignoring virtually all its other aspects precludes any possibility of our understanding either the man, or his book, within their historical context. If Blackstone's main importance to us were his standing as the compiler of a still authoritative legal text, there might be some pragmatic justification for attempting to gain a better understanding of the man, if only to assist in the interpretation of his book. But although the *Commentaries* continue to be cited across a surprisingly wide range of contemporary legal and other contexts (including domestic violence, indigenous land rights, intellectual and other property, as well as the recent presidential impeachment proceedings), the main interest in their author today is as an historical figure. Indeed, he surely qualifies to be treated as a "prism of history," to cite Barbara Tuchman's much quoted phrase, someone whose life story usefully "encompasses the universal in the particular."  

There is certainly no shortage of current historiographical issues to which a life of Blackstone can contribute some illumination. But the most challenging as well as potentially rewarding task is to elucidate those aspects of the man which help explain the form and substance of his exceptionally influential book—the major aspect of the linkage, in Blackstone's case, between (as Kalman puts it) "private self and public life." At this preliminary stage it is difficult to say what sorts of links can be established, and how much or what they may reveal. Yet Doolittle has already demonstrated that the origins of the *Commentaries* in lectures first delivered in 1753 helps account for their unsatisfactorily sketchy treatment of the commercial law


only then being developed by Mansfield. The precedent of Henry Finch—whose original motivation for an extended series of attempts to methodize the common law now appears to have been the commitment to millenarian Calvinism and Ramist epistemology, which, with its promised “method” as a key to knowledge, he had acquired as an undergraduate at Cambridge University in the 1570s—suggests that it would be unwise to exclude any possibilities. The remainder of this paper is devoted to exploring one of them.

II

While the bare fact of Blackstone’s architectural interests has long been known, their duration, depth, and significance have never been properly appreciated or explored. Although that deficiency cannot be completely remedied here, it is feasible to sketch the surviving evidence for Blackstone’s architectural involvements, both theoretical and practical, before considering their possible significance for the Commentaries.

Born on July 19, 1723 in Cheapside, London, William Blackstone was the third surviving and posthumous son of a citizen silk mercer said to be “not of great Affluence” and his wife Mary, eldest daughter of Lovelace Bigg, a minor landed gentleman of Chilton Foliot, Wiltshire. It was a medical practitioner from her side of the family, the London surgeon Thomas Bigg, who gave protection and support to William and his brothers after the loss of their father and subsequent death of their mother during William’s childhood. According to Clitherow, the “liberal Educations” which this affectionate uncle provided his three nephews “supplied the great Loss they had so early sustained, and compensated in a great Degree for their want of more ample Fortunes.

So William Blackstone followed his two older brothers into the professions, rather than pursuing his father’s trade. But whereas Charles and Henry went from Winchester to New College (where another Bigg uncle was warden) and then into the Church, William

28. See Doolittle, supra note 23, at 110-12.

29. See Wilfrid Prest, The Dialectical Origins of Finch’s Law, 36 CAMBRIDGE L.J. 326 (1977), On Ramism, see WALTER J. ONG, RAMUS, METHOD AND THE DECAY OF DIALOGUE (1958). Some postmodernists might deny any necessary or logical connection between the life of an author and the interpretation of his or her work. Yet knowledge of the circumstances in which a text was written often aids our understanding of its author’s aims and purposes, which we can disregard only at the risk of rank solipsism.

30. Note, however, some suggestive allusions by WILLIAM TWINING, BLACKSTONE’S TOWER 3-4 (1994); see also DOOLITTLE, supra note 24, at 108.

31. Clitherow, supra note 18, at iii.

32. Id. at iv.
received a London schooling at the Charterhouse. Enrolled as a fee-paying student in 1730, he became entitled after his mother's death five years later to a free education, provided under the terms of the founder's will for needy, well-recommended boys between the ages of ten and fourteen. Blackstone's nomination, from no less a personage than Prime Minister Sir Robert Walpole, was facilitated by one of his mother's cousins. While his "Talents and Industry rendered him the favorite of his Masters," Blackstone's academic performance can hardly have disappointed his family and friends. At the age of fifteen he had become head scholar of Charterhouse, "and although so young, was thought well-qualified to be removed to the University." He also showed early evidence of literary abilities, not confined to the Latin verse for which in 1737 he won a school prize medal bearing the name and likeness of the poet Milton.

William went on next year to Pembroke Hall, Oxford, in anticipation of another free place, which he duly received as Holford exhibitioner in 1739. Although hardly one of Oxford's grander colleges, Pembroke was then a congenial venue for undergraduates with literary interests, as also perhaps for Jacobites; Samuel Johnson, ten year's Blackstone's senior, "was peculiarly happy in mentioning how many of the sons of Pembroke were poets; adding, with a smile of sportive triumph, 'Sir, we are a nest of singing birds.'

According to Clitherow's memoir, Blackstone tackled his undergraduate studies "with unremitting Ardour," and although the Greek and Latin poets were his favorites, "Logick, Mathematics and the other Sciences were not neglected." The "dry study" of mathematics he

[c]onverted ... into an Amusement, by pursuing the Branch of it which relates to Architecture.

This Science he was peculiarly fond of, and made himself so far Master of it, that at the early Age of Twenty, he compiled a

33. Id.
34. Id.
35. Id.; LOCKMILLER, supra note 20, at 8-9. A seventy-seven-page holograph manuscript of Blackstone's Select Poems and Translations Between Ye Years 1736 and 1744, sold by the London dealer Maggs in 1932 and acquired by the Boalt Hall Law School Library of the University of California at Berkeley circa 1955, seems now to have vanished without trace. See 59 THE NATIONAL UNION CATALOG: PRE-1956 IMPRINTS 656 (1969). Remarkably, and most regrettably, the library also finds itself unable to locate a catalogued microfilm reproduction of the unique original, which was apparently made in January 1956. I am nevertheless grateful to Tom Barnes, David Lieberman, and Thomas H. Reynolds (Associate and Foreign Law Librarian) for their attempts to track down the missing items.
36. JAMES BOSWELL, LIFE OF JOHNSON 75 (George B. Hill & Laurence F. Powell eds., 1934).
37. Clitherow, supra note 18, at v.
Treatise, intitled *Elements of Architecture*, intended for his own Use only, and not for Publication...

This account is inaccurate in one detail, since the treatise Blackstone completed in 1743 bears a slightly different title. The original manuscript, now in the Getty Research Institute, has a title page, written like the rest in Blackstone's distinctive hand, which reads as follows: "An Abridgement / Of / Architecture. / Extracted chiefly from Sir Henry Wotton's Elements, / Monsieur Freart's Parallel, / Mr Evelyn's Account of Architecture. / Mr Gibbs's Rules, / and Mr Chambers's Cyclopaedia. / Oxford / MDCXLIII." (See Figure 1). A later date of July 22, 1743 (that is, thirteen days after the author's twentieth birthday) appears towards the end of the manuscript, following an "Index of near Seven Hundred terms in Architecture, that are explained in this Abridgement." As its full title suggests, Blackstone's *Abridgement of Architecture* was a digest of the classical rules and precepts held to govern "the art of building," derived from a handful of standard authorities. His most important source was either the third (1723) or fourth (1733) edition of John Evelyn's *A Parallel of the Antient Architecture with the Modern... Written in French by Roland Fréart, Sieur de Chambray Made English for the Benefit of Builders. To which is added, an Account of Architects and Architecture,... with the Addition of the Elements of Architecture: Collected by Sir Henry Wotton*. The two other texts mentioned on the title page of the *Abridgement* may be tentatively identified as James Gibbs's *The Rules for Drawing the Several Parts of Architecture* (1732), and Ephraim Chambers's *Cyclopaedia: or, An Universal Dictionary of Arts and Sciences* (1738).

Blackstone provided a slightly more discursive account of his sources in a second version of his text, which does bear the title *Elements of Architecture*, and which he "revised and transcribed..."38
with considerable Additions and Improvements, at leisure Hours in the years 1746 & 1747," as the author relates:

The Method made use of, and many of ye Observations, are borrowed from Sir Henry Wotton’s Elements. The rest is, in great part, taken from Monsr Freat’s Parallel & Mr Evelyn’s Account of Architects and Architecture annexed to it; from Monsr Perrault’s Admirable Translation & Comment on Vitruvius, & his Abridgement of ye same Author; & from Palladio’s elegant Designs, as they are now illustrated by ye Notes of Inigo Jones. A few mechanical Precepts, for ye more comodious drawing ye several Parts of Architecture, are borrowed from Mr Gibbs’s Rules; & as to ye several Definitions, & synonymous Terms of ye Members, they have been chiefly furnished from Mr Chambers’s Cyclopaedia.\(^{42}\)

All of these works, including Claude Perrault’s French translation of Vitruvius\(^{43}\) and Giacomo Leoni’s English and French translation of Palladio with the annexed “Notes and Remarks of Inigo Jones,” would have been available to Blackstone in 1743, although the Leoni edition containing Jones’s observations had only appeared in print the previous year.\(^{44}\) So the 1746-1747 redaction of Blackstone’s architectural treatise, which was presented to the Codrington Library of All Souls College in the late nineteenth century, does not necessarily employ a wider range of sources than its 1743 predecessor. It is, however, more attractively and clearly presented. The number of chapters has been reduced from thirty-seven to twenty-nine, with the text less tightly crammed on the page (see Figure 2), and punctuated by twenty-three meticulous pen-and-ink architectural drawings. (See Figure 3 & 4). Most of these illustrative sketches seem to have been either copied or adapted from the outstanding engraved plates in Evelyn’s edition of Fréart’s Parallel, although that is not the source of an elevation of the cupola of St. Paul’s cathedral as designed by Christopher Wren.\(^{45}\) (See Figure 5).

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42. William Blackstone, Elements of Architecture (unpublished manuscript, Codrington Library, All Souls College, Oxford, catalogued at MS 333) [hereinafter Elements of Architecture]. The quoted passage appears on the folio following the title page.

43. Blackstone may have used [CLAUDE PERRAULT], LES DIX LIVRES D’ARCHITECTURE DE VITRUVIE (Paris, J-B Coignard 1673), and [CLAUDE PERRAULT], ABRÉGÉ DES DIX LIVRES D’ARCHITECTURE DE VITRUVIE (Paris, n.p. 1674), or [CLAUDE PERRAULT], LES DIX LIVRES D’ARCHITECTURE DE VITRUVIE, CORRIGEZ ET TRADUITS NOUVELLEMENT EN FRANÇOIS (Paris, J-B Coignard 1684), or possibly the 1692 London translation (without known translator), [CLAUDE PERRAULT], AN ABRIDGMENT OF THE ARCHITECTURE OF VITRUVIUS . . . NOW ENGLISHED (London, Abell Swall & T. Child 1692).


At the same time, the basic approach and content of the work appear to be largely unchanged. In both texts, architecture is conceived of as a rule-bound art, a relatively "straightforward matter of building in accordance with established principles," even if there is room for discussion about how those principles should best be mobilized in particular cases to produce the desired qualities of balance, due proportion, order, and symmetry. Blackstone's chief concern is to present the classical rules, drawing on authority both ancient and modern, especially the De Architectura (circa 27 B.C.) of Vitruvius, as transmitted and adapted by the sixteenth-century Italian master Andrea Palladio, and his own fellow-countryman Wotton (whose increasingly influential Elements of Architecture, reissued no fewer than sixteen times by the middle of the eighteenth century, also relied heavily on Vitruvius, together with such Renaissance authorities as Alberti, Palladio, and Vicenzo Scamozzi). So from Chapter 8 ("Of ye Orders in General") to Chapter 19 ("Of ye Arches of ye Several Orders"), considerable attention is given to specifying the characteristics (with particular reference to detailed specifications of the mathematical proportions or numeric ratios) of the classical orders, "a System of ye several Members, Proportions & Ornaments of a Column," which are themselves the "principal or reigning Part of an architectonical order." The classical orders were "the primary and constant subject of architectural books" in English from the mid-sixteenth until the early-twentieth century: a modern authority comments that this prominence is not surprising, since they constituted "the absolute criteria for design in architecture."

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46. PETER COLLINS, CHANGING IDEALS IN MODERN ARCHITECTURE 1750-1950, at 6 (2d ed. 1998).
47. See Elements of Architecture, supra note 42, at 6 ("Vitruvius advises to dig ye Foundation, ad solidum & in solido... How deep we should go in this search is a doubt. Palladio has allowed for this Cavasione or Underdigging a 6th of ye Height of ye whole Fabric."); see also id. at 46 (discussing volutes in the Ionian order) ("Scamozzi with reason... planned out a new Capital... But there are two things which Perrault censures in his Composition.").
50. Id. at 27.
52. Id.
Blackstone’s 1743 text concludes with the following reflection:

Such are ye principall Rules laid down by ye greatest Masters in this most excellent Art, by ye due Observation of w[hi]ch a Man may easily acquire a Taste for ye Beauties, & perhaps make some Proficiency in ye Practice of Architecture; a Science which for its Antiquity, Use, Nobility, & Delight has not its equal in ye Universe, having had ye honour of employing ye Divine Majesty itself, in ye Temple erected by God’s Direction at Jerusalem. Τῷ θεῷ Ἀρχιτέκτονι δόξῃ κ. τιμῇ. 53

As it happened, the opportunity to “make some Proficiency in ye Practice of Architecture” came sooner than Blackstone might have expected. In November 1746, the same year that he had moved temporarily back to London to begin reading the common law and wrote the letter quoted at the outset of this paper, Blackstone was elected Bursar of Law at All Souls College. 54 In this capacity, and subsequently as Dean of Law and College Steward (offices which he evidently had no difficulty in combining with his London-based legal pursuits), Blackstone initiated, and supervised with characteristic energy and drive, the long-delayed completion of the interior of Nicholas Hawksmoor’s Codrington Library, which had stood as an empty shell for some twenty years past. That task included construction of a timber gallery on the north wall, the elaborate stucco plastering of the ceiling in 1750-51 by the Oxford craftsman Thomas Roberts, and commissioning the sculptors Henry Cheere and his more famous pupil Louis François Roubiliac to produce twenty-four bronze busts and twenty-five sculptural urns or vases to decorate the top shelves of the high book presses which still line the interior walls. (See Figure 6). Blackstone had previously played a significant role in completing the Wharton building in the North Quadrangle which now joins Hawksmoor’s twin “Telescopic Towers” to the eastern end of the Codrington Library. (See Figure 7). Funds promised by the colorful Whig duke of Wharton in 1720 had run out after Wharton’s death, but following a Chancery suit with his executors, and negotiations with neighboring New College

53. An Abridgement of Architecture, supra note 39, at 51. The Greek phrase may be rendered, “To the divine Master-builder glory and honor.” Paul Tuffin, to whom I am much indebted for this translation, suggests that δόξη is a misspelling of δόξα, “probably from the writer having in mind the final word τιμή.”

54. The precise nature of Blackstone’s offices, however, remains “teasingly obscure” according to GEOFFREY C. FABER, NOTES ON THE HISTORY OF THE ALL SOULS BURSARSHIPS AND THE COLLEGE AGENCY 24 (circa 1950). I owe this reference and much else to the kindness of John Simmons.
in December 1746, "by the care and activity of Mr Blackstone, the building was completed, the College thereby enabled to make its demand and the whole benefaction recovered."\(^5\)

Nor were his practical architectural accomplishments confined within the walls of All Souls. At Wallingford, Berkshire, a few miles downstream from Oxford, where he succeeded his uncle Seymour Richmond as borough recorder in 1749, Blackstone rebuilt Castle Priory, the large house on the river which became a family home after his marriage in 1761. He was also closely involved in reconstructing the adjacent church of St. Peter, which had lain derelict since the mid-seventeenth century. In 1767, Blackstone obtained estimates from Robert Taylor (Henry Cheere’s former apprentice and “one of the outstanding English architects of the generation between the Palladians and the school of Adam”)\(^6\) for paving, furnishing, and plastering the interior of St. Peter’s.\(^7\) Then in the early 1770s he commissioned Taylor to design and erect a distinctive neo-Gothic spire to complete the church.\(^8\) (See Figure 8). Blackstone also seems to have worked with Taylor in the 1760s on a large project to develop the western access road from Oxford across the Botley causeway, with the aim of establishing a new vehicular

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55. Clitherow, supra note 18, at viii; Howard Colvin, Hawskmoor and the North Quadrangle, in HOWARD COLVIN & JOHN S.G. SIMMONS, ALL SOULS: AN OXFORD COLLEGE AND ITS BUILDINGS 19 (1989); Arnold H.M. Jones, All Souls College, Buildings, in 3 THE VICTORIA HISTORY OF THE COUNTY OF OXFORD: THE UNIVERSITY OF OXFORD 183, 187, 191 (Herbert E. Salter & M.E. Lobel eds., 1954). Acta in Capitulis 1707-1753 (unpublished manuscript, Codrington Library, All Souls College, Oxford), records sustained efforts beginning in November 1744 (a year after Blackstone’s election) both to finance completion of the “duke Wharton’s buildings” and to overcome potential problems arising from the fact that they overlooked the warden of New College’s garden. It is noticeable that “Mr Tawney,” the carpenter employed in fitting up the middle set of chambers in Wharton’s building under the terms of a detailed order written and signed by Blackstone on March 8, 1748, see id. at fol.170v, was subsequently employed to finish the carpentry in the Codrington Library, seemingly under Blackstone’s direction. See id. at fols.172v, 179r Blackstone also seems to have played a decisive part in gaining approval for a subsequent flurry of minor works, including re-slating the north quadrangle, see id. at fol.183v, painting both interior and exterior, see id. at fols.184v, 186v, rebuilding the warden’s stable, the college woodhouse and the “necessary house,” see id. at fol.202v, and also erecting in August 1753 a “Gothic Pavilion” in the College Garden, for which see Acta in Capitulis 1753-1800 (unpublished manuscript, Codrington Library, All Souls College, Oxford, entry for August 22, 1753).


57. See MARCUS BINNEY, SIR ROBERT TAYLOR: FROM ROCOCO TO NEO-CLASSICISM (1984); COLVIN, supra note 56, at 964. Although Binney does not discuss Blackstone’s patronage, he notes that the “overwhelming majority” of Taylor’s commissions came not from the landed gentry or peerage but from “new men,” including bankers, West Indian nabobs, financiers, military officers, and lawyers. BINNEY, supra, at 28-38.

traffic route from Gloucestershire and Wales to London. The scheme involved construction of a three-arched stone toll bridge (technically innovative in its employment of bonded voussoirs), across the Thames at Swinford, some five miles northwest of Oxford, part of an elaborate plan to improve the financial position of Blackstone's client Willoughby Bertie, fourth earl of Abingdon. Blackstone evidently oversaw the bridge-building so closely that little trace of the construction operations survives in the Bertie estate steward's accounts (where they might normally be expected to appear), apart from two large lump sum payments in 1767 and 1768 to reimburse Blackstone's (unspecified) expenditures. While positive documentary evidence of Taylor's involvement with Swinford Bridge has not yet come to light, stylistic parallels in the masonry work suggest that this bridge and the refurbished Wallingford church were the work of the same designer.

IV

What can be said of the relationship between Blackstone's architectural concerns and the legal text for which he is still known today? In the first place, his youthful attempts to summarize and set down the rules of architecture may be seen in retrospect as trial essays or dry runs, preparatory to and presaging the still more ambitious undertaking launched in the summer of 1753. On June 23, Blackstone's printed prospectus first announced "A Course of Lectures on the Laws of England" to be delivered in the hall of All Souls College, lectures repeated annually over the next decade and eventually rewritten for publication as the Commentaries. Indeed the aim and scope of these first lectures closely paralleled those of the architectural treatises, the language of which is also recalled in the opening phrase of the following passage: "... to lay down a general and comprehensive Plan of the Laws of England; to enforce and illustrate their leading Rules and fundamental Principles; and to compare them with the Laws of Nature and of other Nations; without entering into practical Niceties, or the minute Distinctions of particular Cases."

59. Blackstone's involvement is not solely of historical interest, for the privately-owned Swinford toll-bridge continues to operate as such today.
60. EVELYN DE VILLIERS, SWINFORD BRIDGE 1769-1969, at 15, 28-29 (1969); see also DOOLITTLE, supra note 24, at 108.
61. William Blackstone, Prospectus for "A Course of Lectures on the Laws of England" (on file with the Codrington Library, All Souls College) ("Oxford, 23 June, 1753. In Michaelmas Term next will begin... "). This statement is repeated with slight variations in the 1754 "Prospectus for a Course of Lectures" (on file with the Bodleian Library, Oxford University, catalogued at G.A.Oxon. b.111(50)), and again in An Analysis of the Laws of England, where the wording is as follows:
At very least, compiling the *Abridgement* and *Elements* must have provided Blackstone with invaluable practice in the arts of judicious borrowing, abbreviation, and paraphrase, as well as the experience of planning an overview which could plausibly claim to encapsulate an entire discipline, or body of knowledge, for didactic purposes. One particular component which seems to have been imported directly from architectural to legal treatise is the tabular diagram or “Analysis of this Abridgement,” which prefaces the first draft of 1743. (See Figure 9). This looks very like an abbreviated forerunner of the diagrammatic chart preceding the *Analysis of the Laws of England*, which in its successive printings from 1756 provided Blackstone’s student audiences with “the Order, and principal divisions, of his Course” of lectures, until these were superseded by publication of the *Commentaries*.62

Secondly, the context and provenance of the extended architectural metaphor with which this paper began now becomes much clearer. When he wrote to his uncle from London in January 1746, Blackstone was not only embarking upon his common law studies in London, but was also about to begin revising his first attempts to digest the rules of architecture. Nor did architecture prove a juvenile enthusiasm soon displaced by weightier legal concerns. On the contrary, Blackstone continued to take a close personal and practical interest in the design and building of structures for the rest of his life.

In particular, his architectural preoccupations plainly survived the lengthy process of polishing and redrafting which culminated in the four printed volumes of the *Commentaries*. Thus from his October 1758 inaugural lecture as Foundation Vinerian Professor of the Laws of England, which is reprinted at the beginning of the first volume of the *Commentaries* (1765), we have the following passage:

The common law 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 it’s symmetry has been destroyed, it’s proportions distorted, and it’s majestic simplicity exchanged for specious embellishments and fantastic novelties.63

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62. BLACKSTONE, supra note 7, at vi.
63. 1 BLACKSTONE, supra note 9, at *10.
Again in the opening paragraph of chapter four of Book II (1766), "Of the Feodal System" readers are informed that

the obsolete doctrines of our laws are frequently the foundation, upon which what remains is erected; and that it is impracticable to comprehend many rules of the modern law, in a scholarlike scientific manner, without having recourse to the antient. Nor will these researches be altogether void of rational entertainment as well as use: as in viewing the majestic ruins of Rome or Athens, of Balbec or Palmyra, it administers both pleasure and instruction to compare them with the draughts of the same edifices, in their pristine proportion and splendour.64

A similar celebration of ancient simplicity (which Daniel Boorstin dubs Blackstone's "primitivism"), cast in terms of edifice and structure, is found in Book III (1768), “Of Private Wrongs,” where in Chapter 21, “Of Issue and Demurrer,” the common law's uncouth technical language ("what is generally denominated law-latin") is defended as "best suited to preserve those memorials which are intended for perpetual rules of action. The rude pyramids of Egypt have endured from the earliest ages, while the more modern and more elegant structures of Attica, Rome and Palmyra, have sunk beneath the stroke of time."65

But perhaps the most arresting and certainly the best-known of the Commentaries' architectural figures displays a significantly different perspective on the theme of corruption or decline from ancient perfection. This passage also occurs in Book III, where readers are seemingly invited "to accept rather than to question the 'fictions and circuities' that had permitted the writ of trespass to supersede much of the medieval law of actions".66

We inherit an old Gothic castle, erected in the days of chivalry, but fitted up for a modern inhabitant. The moated ramparts, the embattled towers, and the trophied halls, are magnificent and venerable, but useless. The inferior apartments, now converted

64. 2 id. at *44.
66. 3 BLACKSTONE, supra note 9, at *320; see also id. at *328. ("When therefore a body of laws, of so high antiquity as the English, is in general so clear and perspicuous, it argues deep wisdom and foresight in such as laid the foundations, and great care and circumspection, in such as have built the superstructure.").
into rooms of convenience, are cheerful and commodious, though their approaches are winding and difficult. 68

Here it would seem that Blackstone's earlier absolute preference for ancient over modern, in law as well as architecture, has broken down; nor does architectural "Gothic" signify a degenerate barbarism which displaced the harmonious simplicity of antique classical style. The same pragmatic readiness to see virtue in the new-built as well as the old is apparent in the extended, rather overwhelming peroration—and architectural metaphor—which concludes Book IV (1769) and the whole work:

Of a constitution, so wisely contrived, so strongly raised, and so highly finished, it is hard to speak with that praise, which is justly and severely it's due: — the thorough and attentive contemplation of it will furnish it's best panegyric. It hath been the endeavour of these commentaries, however the execution may have succeeded, to examine it's solid foundations, to mark it's extensive plan, to explain the use and distribution of it's parts, and from the harmonious concurrence of those several parts to demonstrate the elegant proportion of the whole. We have taken occasion to admire at every turn the noble monuments of ancient simplicity, and the more curious refinements of modern art. Nor have it's faults been concealed from view; for faults it has, lest we should be tempted to think it of more than human structure: defects, chiefly arising from the decays of time, or the rage of unskilful improvement in later ages. To sustain, to repair, to beautify this noble pile, is a charge intrusted principally to the nobility, and such gentlemen of the kingdom, as are delegated by their country to parliament. 69

While a prejudice against "unskilful improvement" is still evident, the moderns are at least allowed to have refined their ancient inheritance.

There are various possible reasons why Blackstone should have come to adopt a more relaxed stance towards both architectural and legal innovation. The classicism (or "primitivism") expressed in the tracts of the 1740s was a natural outgrowth of his early intellectual formation, at the Charterhouse and Pembroke, possibly reinforced by training in Roman law at Oxford. His subsequent encounter with the notoriously less systematic common law in London may have tended to undermine this mindset, for all his evident initial desire to find a "beautiful Symmetry" in the common law of Littleton's day

68. 3 BLACKSTONE, supra note 9, at *268.
69. 4 id. at *435-36.
(and before). Perhaps his various practical experiences with building and the construction trades, at All Souls College and elsewhere around Oxford through and beyond the publication of the *Commentaries*, following his attempts to master and expound the theoretical rules of architecture, also gave Blackstone a clearer appreciation of the role of chance, change, and individual circumstance in human affairs and society at large, as opposed to absolute rules, however impeccable their pedigree.  

It is also worth remembering that the 1740s was something of a transitional decade in English architectural history; Batty Langley's attempt to rationalize the vocabulary of gothic style in *Ancient Architecture, restored and improved... in the Gothick mode* appeared in 1742, while Strawberry Hill, Horace Walpole's influential early Gothic Revival house at Twickenham, was begun in 1747. So the conventional disdain of the Gothic echoed by Blackstone's architectural treatises was already being challenged even as he wrote. Indeed, his own Oxford college was the site of significant movement in this direction. For the redevelopment of the north quadrangle of All Souls College by and after Hawksmoor, following Christopher Codrington's bequest in 1710 of the princely sum of £10,000 (derived from his West Indian slave plantation holdings), employed what Howard Colvin calls a "baroque Gothic," "used scenically and romantically but within the conventions of a classical tradition"—"a unique episode in English architecture."  

This adaptation of Gothic elements—pointed arches and pinnacles—to a neo-classical aesthetic of balance, order, and symmetry provided an object lesson in the productive possibilities of mixing old and new, primitive simplicity and new-fangled improvement.  

Where does this leave our understanding of Blackstone and his *Commentaries*? We can do little more than speculate about the sources and initial motivation of Blackstone's architectural interests, unlike those of the barrister Roger North (1651-1743), whose autobiography attributes "the entertainment I have had in building" to the after-effects of the Temple fire in 1679. But since at least the fifteenth century, a concern with building and architectural design had been accepted as properly part of an aristocratic or noble lifestyle; not until relatively recent times did educational and institutional barriers clearly demarcate trained professional

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70. I am grateful to Tony Radford and Peter Scrive for help with this point.  
71. Colvin, supra note 55, at 44-46.  
architects from gentlemen amateurs. At All Souls, a college dominated (according to the acidulous Thomas Hearne, writing in 1714) by "Persons of great Fortunes and high Birth, & of little Morals and less Learning," a city-born and bred scholarship boy elected to a fellowship on his second application from one of Oxford's least grand societies might well have felt the need to cultivate some such mark of gentility. Perhaps another clue to Blackstone's evident fascination with the art and science of building is provided by the Greek tag which concludes his 1743 treatise. While working on that text Blackstone was also composing what would be his first printed publication, although this work did not actually appear in print until 1747, when an anonymous prefatory "Advertisement" to The Pantheon: A Vision explained the author's aim as to "take a Poetical View of the several Religions, that have prevailed in the World; which are represented by different Genii residing in their different Temples," concluding with the Church of England, "the most pure and Apostolical upon Earth." Whether Blackstone's devout Anglican piety was further reinforced by the burgeoning cult of freemasonry (a movement whose elite and middling-sort adherents were particularly fascinated by the Temple of Solomon, the building evoked so powerfully in the closing paragraph of the 1743 Abridgement of Architecture), awaits further investigation.

As for the Commentaries themselves, I do not propose that Blackstone's book should henceforth be read as extended architectural metaphor, rather than—to cite only some recent contenders—bourgeois liberal manifesto, English Institution, or conservative mystification of the status quo. This Article rather

74.  See supra note 53 and accompanying text.
75. 1 George Bingham, Dissertations, Essays, and Sermons . . . to Which Are Prefixed Memoirs of His Life, at xxiii-xxv (London, F.C. & J. Livingston 1804). As we now have reason to expect, the architectural features of the different temples described in The Pantheon are characterized in some detail. For the Temple of Solomon, see An Abridgement of Architecture, supra note 39.
76.  See supra note 53 and accompanying text.
80.  Compare Boorstin, supra note 65 (claiming that Blackstone's intentions were
seeks to draw attention to suggestive parallels and links worthy of further study in Blackstone's developing attitude toward innovation, both architectural and legal, between 1745 and the appearance of the Commentaries. It also offers a new perspective on Blackstone's motivation as a legal author. The form and content of his early architectural writings demonstrate that Blackstone's interest in compiling an overview or conspectus of a body of knowledge antedated by some ten years his attempts to present a survey of the laws of England, first in lectures, then in printed form. While legal texts of an institutionalist nature may well have channeled and reinforced the expository urge which found expression in his architectural treatises, they seem unlikely to have been the original and sole inspiration for what became the Commentaries.81

This preliminary survey of a neglected architectural theme in Blackstone's life and writings does nothing to contradict the recent suggestion that in approaching Blackstone's legal views, "metaphor is the heart of the matter."82 In attempting to make sense of the man and his books, we plainly cannot assume that Blackstone's broader intellectual, literary, and theological interests contributed only rhetorical trimming to the autonomous legal content of the Commentaries. It would also be unfortunate if a monumental posthumous image of Commentator and Judge were to continue to overshadow our view of the precocious, even radical young intellectual who sat down in January 1746 to storm the bastions of the common law.

81. See Cairns, supra note 79; Watson, supra note 79; see also Harold J. Berman & Charles J. Reid, The Transformation of English Legal Science: From Hale to Blackstone, 45 EMORY L.J. 493 (1996).

82. Rose, supra note 25, at 631.
Figure 1
Title Page, William Blackstone,
*An Abridgement of Architecture* (1743).
Figure 2
Page 1, William Blackstone,
Elements of Architecture (1745-47).
Figure 3
Table IV, Elements of Architecture.
Figure 4
Table II, Elements of Architecture.
Figure 5
Table XXIII, *Elements of Architecture*.
Figure 6
Figure 7
North Quadrangle, Hawksmoor Towers, All Souls College, Oxford.
Figure 8
St. Peters Church, Wallingford.
Figure 9

"Analysis of this Abridgement," An Abridgement of Architecture.