



---

January 1959

## Book Reviews

Allen Butler

---

### Recommended Citation

Allen Butler, *Book Reviews*, 13 Sw L.J. 392 (1959)  
<https://scholar.smu.edu/smulr/vol13/iss3/6>

This Book Review is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

## BOOK REVIEWS

EHRlich'S BLACKSTONE. J. W. EHRlich, Ed. San Carlos, California: Nourse Publishing Company, 1959. Pp. x, 987. \$15.00.

J. W. Ehrlich, a San Francisco advocate, has just brought out what he calls *Ehrlich's Blackstone*. Some might criticize the editor for a lack of modesty, but his title serves admirably to distinguish this work from the sort of edition of the *Commentaries* which we have become accustomed to expect. It also puts the reader on notice that this is not *Blackstone's Blackstone*, at least not in full. It might have been more accurately entitled *The Blue-Penciled Blackstone* or *The Scissors-and-Paste Blackstone*, for it is merely a cutting of the four volume original so that it will comfortably fit between a single pair of covers. There is not a shred of editorial commentary unless the paragraph headings can be so classified. In fact, all of Blackstone's own footnotes have been omitted and all of the old antiquarian's Latin quotations have been suppressed. The traditional pagination has also disappeared. The editor says that he has "excised the unnecessary . . . passages . . . which are not of interest to the law today."<sup>1</sup> But a good deal of Blackstone's woolly version of natural law philosophy, an account of offenses against God and religion, a discussion of *peine forte et dure*, and a chapter on the acquisition of title by custom to such things as heriots, mortuaries, and heirlooms (including tombstones, coats of armor, and church pews) have survived the blue pencil.

The editor does, however, supply a page and a half preface in which he offers a few comments on Blackstone's life and the significance of the *Commentaries*. This preface is quite inadequate. The editor notes correctly that Blackstone was appointed to the Vinerian chair in 1758, but in stating that he also delivered his first series of lectures in that year the editor is in error. His first series of lectures, the preparation of which ultimately led to the writing of the *Commentaries*, was delivered in Michaelmas term, 1753. The editor, a successful advocate, seems too much to deprecate Blackstone's career at the bar in saying that he "had no traits of an advocate and was an unsuccessful lawyer."<sup>2</sup> Indeed, his contemporary biographer<sup>3</sup> notes that Blackstone was not an eloquent barrister. But

---

<sup>1</sup> At *v.*

<sup>2</sup> *Ibid.*

<sup>3</sup> Douglas, *The Biographical History of Sir William Blackstone*, 75-77 (1782).

in 1753 when he turned from his part-time practice at the age of thirty to devote most of his time to teaching, he had already achieved some success at the bar. Prior to 1753, Blackstone had given at least half of his time to the service of Oxford University in non-teaching capacities, and thus had made no real pretense of being a full-time barrister. Even so, his most successful biographer<sup>4</sup> says that he "had more legal business than some of his fellow barristers who claimed to devote full time to their profession." He already (1749) had begun to serve as Recorder of Wallingford, and, when he was engaged principally in teaching and writing his *Commentaries*, he continued to put in appearances at Westminster Hall, notably in two leading cases, *Robinson v. Bland*<sup>5</sup> and *Triquet v. Bath*,<sup>6</sup> in both of which he appeared for the successful litigant. In Blackstone's time little real success at the English bar could be expected to come to a barrister of thirty (nor has the situation greatly changed since). Yet his lectures and the ensuing publication of the *Commentaries* so enhanced Blackstone's reputation that he eventually had to give up teaching in 1766 to turn most of his energies to the practice of law. The growth of his practice had earlier (1760) caused him to decline an appointment as Chief Justice of the Court of Common Pleas in Ireland. That he was elevated to the bench in 1770 at the age of forty-six must in some degree attest to his success at the bar.

In making the statement that "Bracton was rivaled by no judicial writer till Blackstone arose five centuries later"<sup>7</sup> the editor scarcely gives Coke his due. Further, the editor's laudatory remarks concerning the historical and philosophical background that Blackstone furnishes for a study of the common law system, also need some strictures. A close look at many of Blackstone's historical references will show that some are utterly spurious. His philosophy is often hopelessly garbled, and his logic is frequently irrational.

The writer cannot see that any useful purpose has been served in bringing forth this edition of the *Commentaries*. If excerpts from Blackstone's writings are needed to put "the purity and elegance of his style" (in Chancellor Kent's phrase) before the general public, an anthology should include some of his other writing as well as extracts from the *Commentaries*. If something in the way of a short summary of the law is to be provided for the general reader, an up-

<sup>4</sup> Lockmiller, *Sir William Blackstone*, 181 (1938).

<sup>5</sup> 1 W. Bl. 237 & 256, 96 Eng. Rep. 130 & 141 (K.B. 1760).

<sup>6</sup> 1 W. Bl. 472, 96 Eng. Rep. 273-74 (K.B. 1764).

<sup>7</sup> *At v.*

to-date paperbacked American edition of Professor Geldart's *Elements of English Law*<sup>8</sup> would seem preferable. If an introductory text book for potential law students is the object, this writer can perceive no reason for issuing this edition. A recent reviewer<sup>9</sup> of the work, however, states that "this new edition of the Commentaries should be greeted with hosannas by law students who, but for J. W. Ehrlich, would, weary of arm and eye, be forced to lug the existing clumsy, excessively footnoted volumes from class to class." The reviewer pictures a scene unobserved by the writer.<sup>10</sup> Nor can this edition of Blackstone's classic be of any particular use to contemporary practitioners. Surely the average American lawyer would be unlikely to consult the *Commentaries* more than half a dozen times in his professional career.<sup>11</sup> It would seem to this reviewer that if a practitioner wished to consult the *Commentaries* for a point of law, he would seek out one of the earlier English editions, (*e.g.*, the eighth or ninth, the last with which Blackstone had a personal connection) or one of the copiously annotated American editions.

The print of this edition is very readable, making Blackstone's "haths" and "doths" more apparent than if the printer had used one of the less readable eighteenth-century styles of type. The paper is thin but sturdy, but the binding is far flimsier than one would expect for a book priced at fifteen dollars. The index is little more than the table of contents arranged alphabetically.

*Joseph W. McKnight\**

---

<sup>8</sup> (5 ed. by Holdsworth and Hanbury 1953).

<sup>9</sup> Kunstler, Book Review, N.Y. Times, March 15, 1959, § 7 (Book Review Section), p. 7. The author is a professor of law at New York Law School. It was his review that brought this volume to the reviewer's attention.

<sup>10</sup> That reviewer goes on to state that the Commentaries became "the basis of Anglo-American legal education and, even today, are used in many law schools throughout the United States." In a letter, dated March 25, 1959, to the writer, Professor Kunstler notes that professors of law at the University of Louisville, for example, still assign readings from the Commentaries. But Dean M. M. Volz of the University of Louisville wrote this writer on May 20, 1959, that such readings are no longer assigned at his school. Of course, extracts from the Commentaries are certainly incorporated in assigned readings in legal history and jurisprudence elsewhere.

<sup>11</sup> Some professional and lay opinions completely disagree with this writer on this point. The above-mentioned reviewer for The New York Times says that Blackstone's "words are quoted daily in briefs filed in American courts." A recent (Spring, 1959) Brentano's catalogue advertising a first edition of the Commentaries (sale price: \$440.00) states that Blackstone's "name is constantly heard in our courts, and to this day judges fortify their decisions by quoting his statement of the law."

\* B.A., University of Texas; B.A., B.C.L., M.A., Oxford University; L.L.M., Columbia University; Associate Professor of Law, Southern Methodist University.

PREPARATION MANUAL FOR AVIATION NEGLIGENCE  
CASES. BY STUART M. SPEISER. New York: Federal Legal Publica-  
tions, Inc., 1958. Pp. xiii, 1001. \$25.00

This is not a book to be read but a manual to be used. It is not a treatise on the law of aviation negligence. The extent of its treatment of substantive law of aviation negligence is its discussion of the common law on page 1, and of treaties, statutes, regulations, and executive orders in pages 2-10. The author intends to treat the substantive law in a volume of at least comparable size in the near future. He considers the present work to be primarily a collection of reference materials for practical use by attorneys in preparation for trial.

Scarcely two hundred and fifty pages of running text are provided. Some appears at various points under subsections labeled "general discussion." However, most of the text is contained in the two largest chapters, 5 ("Civil Aeronautical Administration") and 9 ("Accident Investigation"). The remainder of the book is composed principally of forms and lists of statutes, regulations, publications, and terminology. Many of these later chapters and sections actually are indexes.

Following a brief general discussion in the first chapter, the next two chapters deal with maintenance and operations. Chapter 4 deals briefly with the Civil Aeronautics Board; chapter 5, much more extensively with the Civil Aeronautical Administration. Chapters 6, 7, and 8 deal with CAA-issued licenses and certificates for aviation personnel, regulations applicable to manufacturers of aircraft and aircraft parts, and regulations applicable to airports, aviation schools, and repair stations. Attorneys may find the book's greatest value in the discussion and check lists in chapter 9, entitled "Accident Investigation." Chapter 10 is a topical index of the principal aviation publications issued by the CAB and CAA. Chapter 11, which with chapter 10 comprises the last 300 non-textual pages, is an alphabetical list of aviation terminology. During portions of the book a lawyer forgets that it a "law" book, as he reads of aircraft manufacture, maintenance, and operation.

The format is commendable. The wide margins of the pages are a nice feature. However, the manual could have made use of tabs for subject headings for readier reference, and many of the long listings perhaps should have appeared in condensed type in order to earmark them for what they are, to segregate them better, and to save paper. This large-sized book for lawyers has no footnotes. There is

no index for the work itself, but the analytical table of contents is usefully arranged and thorough.

An airplane accident case confronts an attorney with numerous difficult problems, including witnesses spread throughout the land, copious documents and regulations to be studied, involvement of foreign law, and the need for technical aviation knowledge. The cost of preparation may be immense. As a pioneer work in offering attorneys a manual to follow in meeting this formidable challenge, this volume should more than pay its way. However, it is doubtful that full use of the author's guidance, recommendations, suggestions, and outlines will often be made. Perhaps the author, familiar with aircraft operation and aviation regulation, and Harry Gair, who wrote the foreward, make use and application of all that the book indicates should be done in preparation, but probably few, if any, others will be able to exhaust all the suggested avenues. Nonetheless, most attorneys should be able to use the work selectively. Reading and understanding the book is no problem, but using it will be.

The manual is slanted, but only slightly, toward the plaintiffs' point of view.

*W. B. Patterson\**

---

\* Attorney at Law, Dallas, Texas