
Professor Calvin Woodard Presents:

BLACKSTONE

and their vi



Sir William Blackston - Historical Jurisprudence

Those who claim ignorance on the subject of Jurisprudence were enlightened recently by Professor Calvin Woodard's dual presentations on Sir William Blackstone and Jeremy Bentham. In two brief hour lectures in the Moot Court Room, Professor Woodward moved from Blackstone's Historical Jurisprudence view of law to the modern day Benthamite Instrumental view of law.

Sir William Blackstone

Few are aware that the legendary Sir William Blackstone began teaching law at Oxford only after failing miserably as a practicing lawyer. In spite of this, Blackstone was the first to bring some semblance of order to the chaos of the unwritten English Common Law. He was also the first to teach law in a university. Prior to Blackstone, English Common Law could only be learned through an apprenticeship in the Inns of the Court. According to Prof. Woodard, English Common Law could be learned but not taught, and Blackstone attempted to pro-

Blackstone was the first person to bring some semblance of order to the chaos of the unwritten English Common Law.

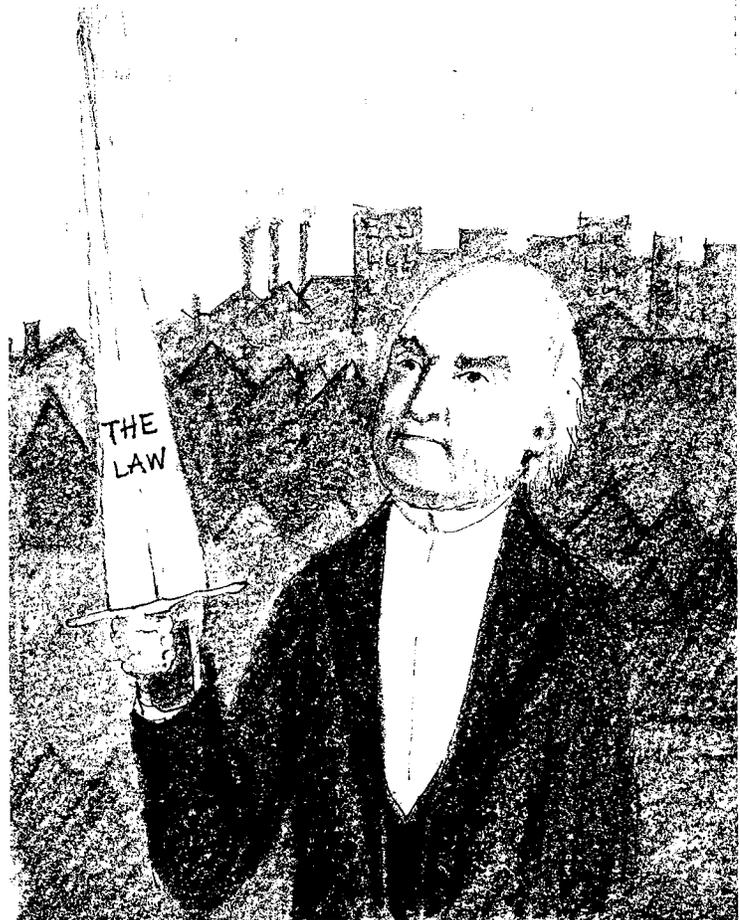
& BENTHAM

ews of the law

vide students with a "freshman survey course on English Law." His commentaries on the law, based on his lecture notes, were never intended to be a definitive statement of English Common Law, but only as a comprehensive treatment of the subject. They were assumed by many to be just that.

Bentham described the unwritten English Common Law as "nonsense" and the idea of judges being the sole interpreters of this unwritten law as "nonsense on stilts."

In his commentaries Blackstone classified the law into four categories. Law either protected rights or prohibited wrongs. Protected rights were classified as either rights of the person or the rights of things; while prohibited wrongs were classified as wrongs against a private person or wrongs against the State. Blackstone saw the nature of law as being two-fold. First, law was not made. Rather, it developed historically from the traditions and cultures of the people. Second, English Law was part of a hierarchy of laws. The ultimate law was God's law. Under that was Natural law, followed by the law of nations and then



Jeremy Bentham - Instrumental View of Law

Blackstone and Bentham

municipal law. For harmony to exist all laws must conform to the highest law. If a law did not conform it was invalid. Judges had the sole authority to determine whether a law was in conformity with the higher laws, the presumption being that the law was valid. The individual was under this hierarchy of laws and therefore subject not only to the municipal laws, but to all higher laws.

Blackstone's influence on the American system of legal education was profound. First, he set the precedent for law to be taught in a University. Secondly, he separated substantive law from the entanglements of procedure and gave it a framework with finite limits. Finally, by publishing his commentaries he paved the way for legal scholars everywhere to write and expound on substantive law and its nature.

Jeremy Bentham

While Blackstone was still teaching at Oxford, Jeremy Bentham entered the university at the age of 14. He was not a pupil of Blackstone for long because he disagreed strongly with Blackstone's interpretation of the law. Blackstone painted English Common Law as the grandest and noblest achievement of man. It was a beacon on the hill, unaf-

fectured by the whims of man. In contrast, Bentham described the unwritten English Common Law as "nonsense" and the idea of judges being the sole interpreters of this unwritten law as "nonsense on stilts." Bentham was not bound to the grand tradition of law as seen by Blackstone. He felt law should be built on reason, not tradition.

Bentham had his own view of law and its relationship to society. In Blackstone's hierarchy of laws, English Common Law was seen as part of a vertical pattern. Bentham, however, viewed law in a horizontal pattern as developed by his "biforcated mode." The biforcated mode was simply a methodology of reducing law into its essential components. Things called "the law" were either properly conceived as law or improperly conceived as law and therefore not true law. Law was either of God or of man. The law which is the providence of lawyers is "positive law," (enacted by legislatures) not the law of God.

Bentham viewed society in light of two principles. First, that the aim of society should be to achieve the greatest good for the greatest number of people. This is the fundamental principle of "utilitarianism" as conceived by Bentham. Second, men will seek pleasure and eschew pain. They will obey laws

which they conceive to be for their good and will avoid pain or punishment. Combining the utilitarian principle, the pleasure pain principle, with the notion of positive law lead Bentham to conclude that law was a lever — a tool, an instrument to control human behavior. Most of the reform acts of the 19th and 20th centuries were based on this instrumental notion.

Bentham had a great influence on the American legal system. This was magnified when combined with the trend towards secularization. Law schools today are seen as technical institutes. Lawyers are technicians, "hired guns" who have the necessary expertise to wield the instrument of law. That is not say that Bentham's instrumentalism has diminished Blackstone's influence in legal education. For those interested in further information of the historical development of legal education as we know it, see Prof. Calvin Woodward's Virginia Law Review article entitled "The Limits of Legal Realism: An Historical Perspective." 54 Va. L. Rev. 689 (1968).

Professor Calvin Woodward
Director, University of Virginia Law School
during his lecture at the J Reuben Clark Law School

