that among the latter (where the division of labor was not great) a very considerable part of the law was restitutive.

The least successful chapter, to this reviewer, is the last, in which Cheyenne law is appreciated rather than described. The authors, citing cases, intensify their expressions of almost aesthetic satisfaction with the "sure" and "nice" juristic sense of the Cheyennes. They regard these Indians as notably more able deciders of cases and makers of law than other comparable peoples. The authors will perhaps pardon this admirer of their work a confession that he cannot see this as they do. The materials presented here are better than we have from other such peoples, and the authors came to understand much of Cheyenne life. If other peoples were known as well, and as abundant materials were thoroughly studied, perhaps the Cheyenne would not seem quite so superior. Moreover, it seems that in this chapter the authors do depart to some extent from their definition of law. For the decisions made in these Cheyenne cases, which the authors so admire, are decisions in which the personal, the notions of decency and rightness, and, in general, all the sub-legal stuff of social control, played a part. Yet the authors hail the success, especially, of Cheyenne juristic sense. It is the effectiveness of a well-organized culture to deal with cases of conflict and difficulty that is basically to be recognized—and admired, if you like. What is shown by these materials is how particular cases are settled, partly to get those cases settled and partly to make effective the functioning of the society in the future. But the rules that are made and the settlement of the cases are only in part a matter of law. Law has an easier time of it in a primitive society than it has in a modern society, for in the former there is strong consensus, a common moral order, and consistency of custom and institution.

Robert Redfield


This review is based on the principle that "before estimating a book it is well to read its title with care" and also its subtitle.

The subtitle of this book is "An essay on Blackstone's Commentaries showing how Blackstone, employing eighteenth-century ideas of science, religion, history, aesthetics, and philosophy, made of the law at once a conservative and a mysterious science."

Mr. Boorstin's book begins with the statement that when Blackstone wrote his Commentaries the world of ideas of the mid-eighteenth century was disturbed by "a new science," which no thinker could ignore. Blackstone realized that this new science had a growing attraction for man's imagination. Therefore, "the vocabulary of his day required that he should somehow present the study of law as a science" for his gentlemen readers. But for such an audience the application to a legal system of scientific method, which created doubts rather than suppressed them, held greater dangers than in the field of physics or philosophy.

Blackstone, "who saw the law as the bulwark of existing society," could not be

* Instructor and Tutor in History and Literature, Harvard University.
† Becker, The Heavenly City of the Eighteenth-Century Philosophers 115 (1932).
satisfied with dangerous inquiry into existing institutions. "The Science of Law was not enough. There must also be a Mystery of Law, a decent veil to protect ultimate values from the devouring gaze of Reason." So Blackstone in his Commentaries made "the law" not only a science, but also a mysterious science.

How was this mysterious science made a conservative one? Blackstone presented the English legal system as a rational and coherent institution, despite the fact that by drawing on ideas in many fields he became involved in the contrary ways of thinking of his time. But unity was given to his work by a system of values: humanity, liberty, and property, and the most important of these was property. By this unity, in a handbook for students and laymen, Blackstone was able to persuade such readers that the English legal system, embodying these values, was entitled to reverence and support. In achieving this unity, Blackstone used an eighteenth-century esthetic appeal, that of neat classification, orderly arrangement, and beautiful symmetry. This unity of thought and structure, set out in a serene and stately style, and without apparent confusion or contradiction to his nonprofessional readers, presented the English legal system as so awe-inspiring that it lulled into unquestioning reverence and banished unhealthful doubts.

This is a brief outline of Mr. Boorstin's book, based on the subtitle. Since the book is addressed to the lawyer, to the student of the history of thought, and to those concerned with the problem of method in social sciences, reviewers will no doubt consider various phases of the book along widely divergent lines. For this reviewer, even after reading the book, there lingers the suspicion that the subtitle is an overstatement, as "the law" was at least conservative, though not a mystery or a science, even before the Commentaries appeared and would have continued so had Blackstone not published his work.

Unless the reader is on his guard, Mr. Boorstin's book may leave the impression that Blackstone was far more adroit than has been thought as a defender of a system and in making "men think they see, in order to prevent their seeing." 2 "The exaggerated views as to Blackstone's optimism and conservatism" and the gibbeting of Blackstone as the enemy of all reform, due to Bentham's abuse, 3 may, in part, appear confirmed by the purpose of this book, which reveals how Blackstone used the ideas of his time "to the end of demonstrating the desirability of certain preconceived social values."

Yet Mr. Boorstin writes that "we are not suggesting that Blackstone's use of the prevailing ways of thought to bring the reader to a certain conclusion was always, or even often, conscious." 4 And later he adds that, "we are not mainly concerned with this question; we are interested, rather, in ascertaining the meaning of the Commentaries in his time." 5 Notwithstanding this latter remark, it appears that the purpose of the book is to show how "the processes of reason are employed by the student of society to support whatever social values he accepts." 6 In his conclusion, Mr. Boorstin affirms that there is nothing diabolical or unfair in encouraging the acceptance of ultimate values in which one profoundly believes. 7 Such statements as the last two may produce the belief that Blackstone cunningly avoided the scientific method of his day in order to enshroud "the law" in mystery and to discourage criticism or doubt.

2 10 Works of Jeremy Bentham 141 (Bowring's ed. 1843).
4 P. 7.
5 P. 91.
6 P. vii.
7 P. 188.
BOOK REVIEWS

It is to be hoped that Mr. Boorstin, on the basis of work already done, can supplement his study of Blackstone and the Commentaries with a book less objective, in which is shown the influence of the spirit and representative minds of the mid-eighteenth century on Blackstone, a conservative by temperament, association, position, and profession. Such a book, not devoted to describing how Blackstone, consciously or otherwise, employed the ideas of his time to accomplish a certain end, would probably place the Commentaries in a different light than that in which it appears in this work. It is not to be inferred that Mr. Boorstin has overlooked this influence or failed to warn his readers in a mild way of it. For he states that “Blackstone's work, like every human document, was the product of a particular time and a particular place” and that “in the eighteenth century, many of the most profound and most influential students of society approached their study with the conviction that institutions were fundamentally beyond human criticism.” This hope is also expressed because recent biographies of Blackstone treat him apart from the time in which he lived.

These statements should in no way be considered as detracting from certain definitive merits of Mr. Boorstin's book, a detailed, scholarly, and novel exposition, based on an unusually minute study of the Commentaries and a wide survey of non-legal material of the eighteenth century. It will surely challenge the interest of the student of legal history and serve as provocative material in a course in legal history. But as Blackstone's handbook may have misled his uncritical audience, so may Mr. Boorstin's book mislead those of the "semantic school," who wish to find additional authority for their belief that "the law" is always crafty and mystical in its use of ideas and words and that lawyers as jurisprudential scientists are ever "tricksters and quibblers."

For readers not seeking self-serving evidence, Mr. Boorstin’s closing pages should be read first. It is there he states “we shall not be unfair if, in determining the stature of the man and the validity of the document, while admitting its logical limitations,” we judge mainly by the social meaning of the values of humanity, liberty, and property in Blackstone’s time, and not by “the hyper-scientific approach to institutions.”

J. S. WATERMAN


This book is a valuable discussion of the legal problems relating to surplus and profit distributions by business corporations. The particular matters treated by the author include not only the determination of the fund available for dividends, but also the declaration, payment, and revocation of dividends, remedies against directors

8 P. 4.
9 P. 12.
10 Warden, The Life of Blackstone (1938); Lockmiller, Sir William Blackstone (1938).
12 P. 189.
† Dean of the University of Arkansas Law School.
* Member of the New York Bar.