

## **Blackstone's canvas of influence redux: did he contribute to the construction of ethics in American education law?**

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### Abstract

How a business does what it does (process) is as important as the product made or the services delivered. Executives recently have tended to focus exclusively on profits and neglect principles, to the overall detriment of society and the environment. The letter of the law and contracts, as well as the spirit of agreements, must be co-mingled if progress is to be made in addressing today's major issues.

McCarthy synthesizes the work of Blackstone, Carter, Heifetz and Howard in developing a foundation for integrity in the workplace, grounded in principles rather than people and power. Urging a focus on core issues rather than peripheral distracters, he suggests ways to bridge the gap between espoused values and daily behaviors.

### I. Introduction

"Whether I shall turn out to be the hero of my own life, or whether that station will be held by anybody else, these pages must show." (1)

Blackstone did not read these words, nor know the author. He lived before their time. Yet, he would have found them attractive, as they capture the essence of his life story. They occupied my mind as I considered making the connection between Blackstone redux and modern American education ethics law--the stuff of right and wrong that confront every "hero"--for the 2006 Oxford University Roundtable on Blackstone. For that purpose, I wanted to trace Blackstone's contribution on professional education ethics and argue his presence in statute, litigation, and standards. From the outset, I realized it could not be a theory of maximization, but would the trail be strong enough to meet the lesser tests for a theory of contribution? And, how would I go about finding it? Like any piece of detecting, it begins with and ends with a series of questions and a hunt for Blackstone's legacy that would take me into several disciplines--law, history, literature, film, and education--in itself a tribute to his scope. Now the questions:

Why should William Bertie Blackstone be of interest to school administrators? He is not mentioned in any educational leadership textbook. His name does not figure into any discourse on educational philosophy. He is unknown to practitioners charged with managing and leading schools. There is, however, passing interest in his biggest critic, Jeremy Bentham, in a book on educational ethics. (2) Moreover, when I questioned five lawyers from three states (Idaho, Washington, and Oregon) about Blackstone, they recognized his name but regarded him as a "largely forgotten" English jurist whose writings were not important in their law school studies. With such pale endorsements, I begin my paper, therefore, with a two-part question: "Who was William Bertie Blackstone and why should school leaders care?"

Searching for a response to the first part of my question--who was he--I find myself in the Idaho Supreme Court building--more specifically, riding the elevator to the basement level of the library where "few lawyers go" according to the law library assistant. The elevator doors open to pitch-darkness and the white-haired assistant probes the inside wall for light toggles. The lights click on loudly and I see row-after-row of gray metal shelving, effortlessly presenting their treasure trove of old books in neat lines of brown-and-tan and red-and-black. The cracked bindings of the oldest books add texture to the sterile uniformity and countless white-sticker labels suggest bandages against the wounds of time as much as markers of catalogue efficiency.

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"Blackstone ..." the white-haired assistant mutters to himself, more than to me. "He'll be over there, in the corner, with Smith and Wood and the others. Doesn't get many visitors. Why did you say you're after him?" he asks, warming to the idea that someone was finally "after" the English jurist.

Again I tell him my purpose, with greater brevity. I am anxious to get to work.

"Oh yes," the library assistant replies and he walks me to the corner. "Going to Oxford, eh? Well, here you are." He gently touches the dusty volumes--four different sets--and softly calls out their names: "Chitty's, Cooley's, and this four volume set--our very own 21st edition of 1844. I recommend Chitty or Cooley for the ease of the star-reference system. Of course, we have HeinOnline (3) if you want St. George Tucker's version."

"Thank you," I say genuinely.

"Yes, well." He wants to stay and watch, but he finally mutters, "Switch off the lights when you leave, will you?"

Alone, I carefully open Chitty and look at the publication date--1832. Cooley is 1899. The leather bindings of both editions want to separate and crumble in my hands. Leather and paper dust motes rise up and tickle my sinuses--"Blackstone pollen" I would come to call this soft explosion from the books. I open Chitty again and begin to read the section, Life of the Author: "Sir William Blackstone was born on the 10th of July, 1723, in Cheapside, in the parish of St. Michael le Quern, at the house of his father, Mr. Charles Blackstone, a silk-man, and citizen and bowyer of London (4)..."

With this, the answer to the first part of my question, "Who was William Blackstone?" begins to take form. In time, I learned that most biographical sketches on Blackstone's legal accomplishments do not start with his birth to Charles and Mary Blackstone, but rather with his re-birth as a lawyer-scholar at Oxford. And it is time spent at Oxford--both for him and me--that I will argue a claim of his paternity to American education ethics.

With his first lecture in 1758 as Vinerian (5) professor of law at Oxford, William Blackstone was laying a foundation for American education ethics, an extension of his teachings he would have considered illogical--as illogical to him as the idea of American independence. Ironically, the impact of his lectures in book form--Commentaries on The Laws Of England--would shape the intellectual movement that became the American Revolution. His monumental treatise was a "runaway best seller" in the colonies (6) at a time when knowledge-of-the-laws as language for grievances against King George III were the talking points for every American at every level of society.

Moreover, the initial readership of the Commentaries was not limited to attorneys (7) or an era. The lasting power of Blackstone's influence was demonstrated during the United States Senate hearings for John Roberts, President George W. Bush's nominee as Chief Justice of the United States Supreme Court.

At the September 4, 2005, hearing Senator Sam Brownback, R-Kansas, asked Roberts: And you talked about shocks to the system when the judiciary act ... In perhaps no other area of law is stability more important than in the area of private property and property rights. Even before the existence of the United States, William Blackstone, that famous English legal authority, stated this; he stated:  
quote,

"The law of the land postpones even public necessity to the sacred and inviolable rights of private property.. Mindful of the

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sentiment and the excesses of the King, yet aware of the needs of a new and growing country, the framers of our Constitution established a strict limitation on the government's ability to take private property.... What I'm curious about is your view is: Does that right exist? I would not think Blackstone would agree that that right exists for the public to take private property for private use. (8)

Senator Brownback, a potential presidential candidate, was showing his legal prowess to Roberts, acknowledged as one of America's intellectual legal elite. It was an exceptional opportunity to talk about Blackstone in a rarified setting, but Roberts refused to give a judicial history lesson. Instead he parsed the controversial private property takings case, *Kilo v New London*. (9) While Brownback's reference to Blackstone may not have resonated with the general public (although pronouncing both names in close proximity provided nice alliteration for newsmen at the time), it did reveal that Blackstone's legacy still breathes life in American judicial and legislative discourse at the federal level whenever the topic-of-the-day exceeds the mere classification of "important". Blackstone reemerges whenever the "life-story" of America is involved.

In Part I, as a reflection on that legacy, I will use snippets of biographies from the lives of America's Founding Fathers to briefly review Blackstone's life, including his return to Oxford and his masterful gloss on English common law, the *Commentaries on The Laws Of England*. Within this part, I review how the *Commentaries* were foundational to the United States Constitutional epoch.

In Part II, I discuss how the *Commentaries* shaped (unbeknown to education scholars and practitioners alike) codes of professional ethics for American school administrators via association standards, research, and selected case law.

Finally, in Part III, I playfully argue, with some fictionalizing of my own creation, a conversation with Blackstone. Here, I argue a linkage to American literature and film that connects Blackstone to the ultimate form of American ethical conduct--that of the celluloid hero.

I conclude with the obvious: The ship of American democracy rode an Oxford current to its many destinations which included unscheduled ports-of-call for school leadership and the arts.

### I. Blackstone's life and biographical notes on selected Founding Fathers

We can imagine Blackstone, the young lawyer, struggling to make his way. Prior to his Oxford appointment as the first Vinerian professor in 1758, his biographers agree that he was not a very good attorney. (10) His failure would become his opportunity to greatness.

Like many of the American Founding Fathers, circumstances would require that he struggle through difficult times and make his own way. And, like many of the Founding Fathers, his childhood did not include the guiding hands of doting parents. In fact, he never knew his father and his mother did not live to see him as a man. (11) He was born on July 10, 1723, four months after his silk merchant/bowyer father died, into a household that, when Blackstone was twelve, would also lose its mother.

Comparatively, what was going on in the lives of great Americans? Benjamin Franklin will anchor my comparative timeline. In 1723, Franklin was seventeen and working the streets of Boston as a writer and street-peddler of newspapers. Within that year, he would leave Boston for Philadelphia, breaking an indentured apprenticeship to his brother. The next year, 1724, he would travel to London to learn more

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about the publishing business. (12)

The other Founding Fathers of the American Revolution were yet to be born.

Returning to Blackstone's difficulties, familial rescue interceded: His maternal uncle, Thomas Big, (13) arranged for Blackstone to attend a good public school, Charter-House, which still stands today in Goodling, County Surrey. An English public school was not the same as an American public school. In fact, English public schools were more like private boarding schools. The term "public" means the school accepted students from throughout the country as opposed to a selective area. (14)

Blackstone excelled at Charter-House and became a favorite among instructors. "By the age of fifteen, he was the head of the school, and although so young, was thought well qualified to be removed to the University; and he was accordingly entered a commoner at Pembroke College in Oxford on the 30th of November, 1736." (15)

Charter-House, by the way, was located on the site of a Arthurian monastery and its students were often called "Carthusians", after the strict Catholic order founded by St. Bruno in 1084 in the French Alps. (16) In addition to Blackstone, its roster of the famous includes Joseph Addison (author and politician), Robert Baden-Powell (founder of the boy-scout movement), and John Wesley (founder of the Methodist Church).

As a teenager at Oxford (he was fifteen when he arrived), Blackstone developed an interest in poetry. (17) It is tempting for me, as preparatory for Part III, the literary and film section of this paper, to visualize young Blackstone being entranced by a teacher like the character portrayed by Robin Williams in *Dead Poets' Society* (18) wherein the inspired Blackstone "seizes the day" (*carpe diem*) and infuses his love of poetry into all of his writings, a bent that gives the Commentaries their meter. (19) But it is only an enjoyable prequel to Part III, though it is a claim with some possibilities that he turned to poetry as a refuge from the limitations of his life and as an intellectual muse for his youth--a personal passage not unusual for adolescents. In any case, poetry's demands for reflection, structure, and creativity are what made the Commentaries a work of literature as well as law. It is tempting to form another vision--that of the character of

Thomas Jefferson--in the movie musical *1776* (20) as Jefferson intellectualizes the grievances of the thirteen colonies into the prosaic language of the Declaration of Independence, a claim with definite Blackstoneian possibilities that will be noted in Part II.

Blackstone's most cited poem, "The Lawyer's farewell to his muse" is lengthy. It was written after he had completed his law studies at the Middle Temple Inn of Court, one of four training houses for English lawyers in London. The lines most often quoted, which portend the

Commentaries, are these:

Lost to the fields, and torn from you,  
Farewell, a long--a last adieu!  
My wrangling courts and stubborn law  
To smoke, and crowds, and cities draw.  
There selfish faction rules the day,  
And pride and avarice throned the way;  
Diseases taint the murky air,  
And midnight conflagrations glare;  
Loose revelry and riot bold  
In frightened streets their orgies hold ...

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There, in a winding close retreat,  
Is Justice doomed to fix her seat;  
There, fenced by bulwarks of the law,  
She keeps the wondering world in awe;  
And there, from vulgar sight retired,  
Like Eastern queens, is more admired.  
O let me pierce the secret shade,  
Where dwells the venerable maid,  
There humbly mark, with reverend awe,  
The guardian of Britannia's law;  
Unfold with joy her sacred page,  
The united boast of many an age;  
Where mixed, yet uniform, appears  
The wisdom of a thousand years;  
In that pure spring the bottom view,

Clear, deep, and regularly true;  
And other doctrine thence imbibe... (21)

Educational ethics is, this paper contends, among those other disciplines which "thence imbibe" in Blackstone's Commentaries, the "guardian of Britannia's law", which he would "unfold with joy her sacred page" and where he "mixed ... the wisdom of a thousand years" known as English common law--the great body of unwritten law based on customs with the "bulwarks" of the written law. Ironically, the creation of the Commentaries would only come after he failed as a lawyer.

In 1746, his legal studies completed, Blackstone was admitted to the bar. In the same year, Benjamin Franklin could look back on the invention of the Franklin stove, the plan for the University of Pennsylvania, and the creation of the American Philosophical Society. George Washington was a fourteen-year-old, three years under the tutelage of his older half-brother, Lawrence, due to the unexpected death of Washington's father in 1743.

The years 1746 to 1758 were difficult for Blackstone. (22) These are the years that his brother-in-law biographer, James Clitherow, attributed to lack of powerful friends, but that Blackstone, as noted earlier, attributed to his "temper, constitution, inclinations and thing called principle, [that] have long quarreled with active life." (23) Chitty observes that, "Mr. Blackstone, not possessing either a graceful delivery or a flow of elocution (both which he much wanted) nor having any powerful friends or connexions [sic] to recommend him, made his way very slowly, attracting little notice and still less practice." (24)

In America, meantime, Thomas Jefferson was still in his boyhood, having been born in 1743. John Adams was a young attorney, with more luck at law and the right kind of temperament for it. Franklin had sold his printing business and had become a scientist. His study of electricity, for which he won the coveted Copley Medal and powered election to the Royal Society, had brought him international fame. Also of interest to our comparative timeline is this: In 1755 Franklin supported British General Edward Braddock's military incursion into the Ohio territory against the French. Braddock's second-in-command was George Washington. Braddock's expedition was a disaster. Braddock was killed and Washington was forced to lead the first of many military retreats to safety. Disillusioned with British military life, Washington returned to his newly inherited estate, Mt. Vernon.

Disillusioned with British lawyer life, Blackstone returned to Oxford where he would secure his fame in

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the history of English (and, later, American) law and where he would (though unknown to him at the time and totally against his views on the matter) influence the intellectual movement behind the American Revolution.

When Blackstone arrived at Pembroke College, Oxford University, in 1753, he had established himself as an expert manager of funds, had reorganized and revitalized the University Press and had published important legal treatises on consanguinity. All of these activities accumulated and he was unanimously elected Vinerian Professor. (25)

His lectures on English common law, which would become a four volume work, *Commentaries On The Laws Of England*, began with a famous apology wherein Blackstone writes in the third person, anticipating that his codification would not be well received by his students, by Oxford, or by the legal community. Equally, his apology may have been a projection the remnants of his self-doubting personality, what he called his "temperament", or it may be that he considered the apology a necessary literary convention, much like a scene from a Shakespearean play--before his death he willed his notes on Shakespeare. (26) In any event, the soliloquy is worth reading:

He must be sensible how much will depend upon his conduct in the infancy of a study which is now first adopted by public academical authority; which has generally been reputed (however unjustly) of a dry and unfruitful nature.... He cannot but reflect that, if either his plan of instruction be crude and injudicious, or the execution of it lame and superficial, it will cast a damp upon the farther progress of this most useful and most rational branch of learning; and may defeat for a time the public-spirited design of our wise and munificent benefactor. And this he must more especially dread, when he feels by experience how unequal his abilities are (unassisted by preceding examples) to complete, in the manner he could wish, so extensive and arduous a task; since he freely confesses, that his former more private attempts have fallen very short of his own ideas of perfection.... One thing he will venture to hope for, and it certainly shall be his constant aim, by diligence and attention to atone for his other defects; esteeming, that the best return, which he can possibly make for your favourable opinion of his capacity, will be his unwearied endeavours in some little degree to deserve it. (27)

He achieved "the best return." The *Commentaries* are regarded as foundational to English and American law studies and, as noted in my introduction, his name and work are quoted today as if he were in the room, listening to the debate. In fact, he is--a point I will explain in Part III with some creative license.

When he lectured and wrote and published his *Commentaries*, he was filling an intellectual void that had existed for decades and his students, for the most part, gave him rapt attention. Blackstone had his critics, of course, for he was both breaking new ground--uniquely codifying English common law--and perpetuating old political ground--the absolute sovereignty and divinity principle of the British king, then George II. America's much hated "King George"--George III--began his rule in 1760. (28)

Blackstone's critics attacked him for many reasons--envy, politics, competition, and for what he was--a corpulent, reserved, intellectual. In the Joshua Reynolds portrait (29) he projects the airs of a self-satisfied "big man", pausing from his lectures to hear a question from a student that, in his mind, he has already answered.

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His worst critic was a fellow scholar and former student--Jeremy Bentham. As a student, he heard Blackstone lecture and described it as "formal, precise and affected lecturer just what you would expect from the character of his writings: cold, reserved and wary," with a regard for the King that "stuck in my stomach." Bentham denounced Blackstone's work as "ignorance on stilts." (30)

Bentham would be joined by other contemporary critics (Joseph Priestly) and, later, by some of the Founding Fathers (George Mason), but none would match Bentham's dedication to the task.

The work the critics disparaged was monumental.

Men like Bentham never realized or appreciated the importance of Blackstone's historic bridging and integration of centuries of English common law. Perhaps they regarded Blackstone's work as an extension of what already existed and, for that reason, they could not see the dimensions of its originality nor understand its historic timing.

Blackstone used architecture as metaphor in his writings. I will borrow his device to discuss that the fact that the Commentaries were not the first attempt to codify the vast common law landscape. It was, instead, a capstone on archway that provided access to its many publics--scholars, lawyers, and revolutionaries.

Who were the archway's earlier masons? The first stone was laid by Ranulf Glanvil's *A Treatise on the Laws and Customs of the Kingdom of England*. Written in Latin between 1187 and 1189, it was not printed until 1554 and was reprinted in 1673. Glanvil was King Henry II's advisor (and a lawyer-soldier to boot) who was killed in the crusades. As the first effort to codify English common law and it was said to be

For a hundred years Glanvil's *Treatise* was the guiding document for English law and was possibly known by the English barons who forced the creation of the greatest document of English law, the *Magna Carta*. At a meadow called Runnymede, on June 15, 1215, King John's barons won concessions that would check the King's arbitrary acts--especially his above-the-law version of tax-and-spend. Originally called the *Articles of the Barons*, the King's royal chancery produced a formal version--the *Magna Carta*, or the *Great Charter*. Many of its words have a ring of familiarity:

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs ... No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without his consent....

No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement [sic] of his equals or by the law of the land. (31)

King John, like kings before and after him (especially King George III), did not keep his promises. Nonetheless, the *Magna Carta*, which was "born with a grey Beard" (32) remained in tact as a far-reaching legal, political, and spiritual document.

And then came Bracton (Henry of Bratton, Henricus de Brattona or Bractona), an English judge in the

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King's Bench from 1247-1257. Bracton's *On the Laws and Customs of England* has been reduced to his name, Bracton. It is now thought that he accumulated the writings of others, similar to the work of a modern textbook editor. In any case, he codified Roman and canon law. Bracton's clarity is modern: To rule well a king requires two things, arms and laws, that by them both times of war and of peace may rightly be ordered. For each stands in need of the other.... Though in almost all lands use is made of the *leges* and the *jus scriptum*, England alone uses unwritten law and custom. There law derives from nothing written [but] from what usage has approved.... England has as well many local customs, varying from place to place, for the English have many things by *cust* which they do not have by law, as in the various counties, cities, boroughs and vills, where it will always be necessary to learn what the custom of the place is and how those who allege it use it. (33)

Later jurists, such as Matthew Hale, glossed Bracton's work, but they were not well received. The stage was set for Blackstone's magnum opus.

According to James Boswell, the biographer of Samuel Johnson, Blackstone fortified himself with port while he wrote the *Commentaries*. (34) Whatever maintained him during the project--be it port or a poet's muse--it assured him his place in history, both in England and in the United States, both in law and literature.

The *Commentaries* are divided into four volumes, or books, titled as

Book the First: The Rights of Man

Book the Second: The Rights of Things

Book the Third: Of Private Wrongs

Book the Fourth: Of Public Wrongs

My paper draws from all four books, generally, and from the third and fourth books particularly, as will be seen. Blackstone captured, organized, and expanded English common law into a sensible structure--his architecture metaphor. The impact of this work at a critical time in history is best captured by Daniel Boozin, former Librarian of Congress and Pulitzer Prize winner, as a legacy for American law and federal constitution making:

Blackstone's work--as explained and elaborated by numerous American editors--became the bible of American legal institutions. The qualities which fitted it for its role were not merely its literary grace, its sprightliness, and its readability, although without these the book might never have done its job. The underlying assumption of the book was that intelligent laymen ought to, and could, understand their laws.... Since the first volume of Blackstone's *Commentaries on the Laws of England* appeared in 1765, this work has thus filled a place unique in the history of law in the English-speaking world. It is the first important and the most influential systematic statement of the principles of the common law. For generations of English lawyers, it has been both the



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foremost coherent statement of the subject of their study, and the citadel of their legal tradition. To lawyers on this side of the Atlantic, it has been even more important. In the first century of American independence, the Commentaries were not merely an approach to the study of law; for most lawyers they constituted all there was of the law. The influence of Blackstone's ideas on the framers of the Federal Constitution is well known. And many an early American lawyer might have said, with Chancellor Kent, that 'he owed his reputation to the fact that when studying law ... he had but one book, Blackstone's Commentaries, but that one book he mastered.' (35)

What is it that made Blackstone's work so compelling to the Founding Fathers? First he organized legal history at a time when a scientific synthesis of English law was absolutely necessary for the thinking of Jefferson and Hamilton and Marshall. (36) Second, his writer's voice was both elegant and popular. In many respects, Blackstone was a great story-teller and he entertained his young students with lectures that were rich with imagery, a trait of writer who was, at heart, a poet.

In English law, William Blackstone set his Commentaries in a metaphoric language that was strikingly visualist, especially considering that his work was born as a series of lectures wherein aural metaphors would have been tolerated and even naturally expected. Blackstone repeatedly made 'observations;' analyzed legal powers from various 'views' or 'points of view,' and reported that truths 'appear.' He notably regarded himself as offering the prospective law student 'a general map' of the law, which he later described in visual terms as a magnificent, if somewhat antiquated, 'Gothic castle.' (37)

It is easy to imagine Blackstone's phraseology, his cadence, his metaphoric imagery resonating in the minds of Jefferson and Hamilton and Marshall as they searched for the right word to convey the Revolutionary spirit, the Congressional dialogue and record and, later, especially for John Marshall, the meaning of the Constitution. (38)

For the great American Federalist Alexander Hamilton, Blackstone was, in many ways, foundational. It is, as noted above, ironic that Blackstone should have had such an enormous impact given the fact he opposed American independence. Yet, as Hamilton biographer Forrest McDonald puts it: Blackstone has been called not only the paramount influence on Hamilton but also the intellectual wellspring of both the Declaration of Independence and the Constitution. To appreciate what Blackstone did contribute to Hamilton's mature thinking, one must first understand why the Commentaries appealed to Hamilton.

To any reader having a keen mind and a love of intellectual adventure, as Hamilton surely had, Blackstone is well-nigh irresistible. His style is elegant; his methods of reasoning are varied and ever-persuasive; by turns, he is charming and concise, seductive and sarcastic, witty and sober, anecdotal and crisply logical.

Blackstone often employed a delightful, Alice-in-Wonderland kind of closed logical system to justify his proposition that English law as a whole was perform (though steadily improving) ... Blackstone also appealed to Hamilton and influenced him so powerfully because the Commentaries are studded with gems of pure wisdom. For example, in discussing equity courts (those that judge disputes in which no formal law seems to apply, or in which strict application of the law in a special case would effect injustice),

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Blackstone praises them as

indispensable and invaluable. On the other hand, he declares that 'the liberty of considering all cases in an equitable light must not be indulged too far, lest thereby we destroy all law, and leave the decision of every question entirely in the breast of the judge. And law, without equity, though hard and disagreeable, is much more desirable for the public good, than equity without law: which would make every judge a legislator, and introduce most infinite confusion.

As to Blackstone's substantive contributions to Hamilton's maturation, at least three can be isolated. The first is the most obvious: Blackstone taught Hamilton a reverential enthusiasm for the law itself. ...In Book 1, entitled 'Of the Rights of Persons' Blackstone declares that the first and primary end of human laws is to protect individuals 'in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature,' and then goes on to demonstrate that all rights are relative. Secondly, Blackstone contributed a great deal, albeit obliquely, to Hamilton's development of a workable theory of federalism.

Various American lawyers nourished on Blackstone--including James Wilson, Rufus King, and Oliver Ellsworth, all of whom would sit with Hamilton in the Constitutional Convention in 1787--developed such a concept of sovereignty about the time Hamilton did. Thirdly, it may have been Blackstone who wooed Hamilton back into a belief in the desirability of mixing governmental powers on the horizontal axis. Hamilton had abandoned the idea earlier, but embraced it anew after studying Blackstone's persuasive rationalization. (39)

The arrival of the Commentaries in American in 1772 created frenzy among scholars and laymen alike. For Thomas Jefferson, who was already regarded as one of the great intellectuals in Virginia and the colonies, it may have been an inspiration. Barely two years after the Commentaries appeared in America, Jefferson published, in 1774, A Summary View of the Rights of British America which is regarded as the precursor to the Declaration of Independence.

This work has significance for the argument we make that Blackstone influenced ethics. Jefferson most certainly knew the Commentaries as a reference being used by other Founding Fathers. His Summary is, we argue, a draft for the most famous American grievance against unethical conduct--the Declaration. The Summary closes with:

That these are our grievances which we have thus laid before his majesty, with that freedom of language and sentiment which becomes a free people claiming their rights, as derived from the laws of nature, and not as the gift of their chief magistrate ... kings are the servants, not the proprietors of the people ... It behoves you, therefore, to think and to act for yourself and your people. The great principles of right and wrong are legible to every reader ... The whole art of government consists in the art of being honest. Only aim to do your duty, and mankind will give you credit where you fail. No longer persevere in sacrificing the rights of one part of the empire to the inordinate desires of another; but deal out to all equal and impartial right. Let no act be passed by any one legislature which may infringe on the rights and liberties of another ... The God who gave us life gave us liberty ... the hand of force may destroy, but cannot disjoin ... (40)

Is it possible that I have created a legal fiction (41) by connecting Jefferson's writings to the

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Commentaries? Perhaps, but consider the following roll-call of statements about the attention the Founding Fathers gave to Blackstone:

All the delegates who had studied the law learned from the books of Blackstone, the great British legal authority, and from Montesquieu, the elegant French political writer who also revered the British system.... the only record of precisely what Madison's law studies covered is not promising. It reads:

'Studying with Mr. E. Shippen, Blackstone's Commentaries on the Laws of England.' (42)

And of Pinckney:

General Charles Cotewsworth Pinckney ... one of the state's (South Carolina) most distinguished and respected citizens, famed for his exploits in both peace and war, who could trace his lineage to a vassal of William the Conqueror ... had been sent to Oxford to study law, where he read with the great legal theorist William Blackstone. (43)

And of Gerry:

In the construction of written documents such as the constitution, [Eldridge Gerry Constitutional Convention delegate from Massachusetts] said, the House should proceed according to the rules set down by William Blackstone in his Commentaries, wherein the text of a written document was to be interpreted according to the usual meaning of its words, their use in context, and their effect and consequence. A construction leading to an absurd or trivial meaning was to be disregarded ... Words, Gerry continued, again following Blackstone, should be construed to their reason or spirit, which was to be found in the cause that moved their enactment. In the case of the constitution, the cause was to be found in its preamble. (44)

And of Anti-Federalists:

The judicial are not only to decide questions arising upon the meaning of the constitution in law, but also in equity. By this they are empowered, to explain the constitution according to the reasoning spirit of it, without being confined to the words or letters. From this method of interpreting laws, says Blackstone, by reason of them arises what we call equity ... (45)

And of Madison:

Madison here appeared to build on Blackstone's account of the indissoluble union of England and Scotland in 1707, a union that furnished a high-profile paradigm for what the Philadelphia framers were proposing in 1787. (46)

And of Marshall and his short list of "influential" friends:

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When the first American edition of the Commentaries appeared in 1772, its original subscribers, in addition, to Thomas Marshall (John Marshall's father), included George Wythe, John Jay, James Wilson, Roger Sherman, John Adams, and virtually every member of the legal profession ... both Jefferson and Wythe, who had been Jefferson's mentor, in the 1760s, were powerfully impressed by Blackstone's approach. (47)

And, finally:

The rights of petitioning the king, or either house of parliament for the redress of grievances is appertaining to every individual (citing Blackstone, Book I: 244, 245) when positive laws are silent. The points of conflict were not, in their eyes, doctrinal--they assumed their English mentors could read Blackstone as well as they did. (48)

My list of witnesses provides an interesting paradox in that the Founding Fathers were engaged in the making of a constitution, a concept that was foreign to the Commentaries. (49) The connection, of course, was that the Founding Fathers were men who still believed in the laws of England and Blackstone was recognized as the most current and comprehensive codifier of English law.

Of course it would not do to leave this recital of Blackstone's influences on the Founding Fathers and the constitutional convention without fast-forwarding to one additional, noteworthy, American biography that fits into my argument about Blackstone's legacy on the American Constitution--here, the tie is with a man who faced the ultimate test of preserving the Constitution as envisioned by the Founding Fathers. Like Blackstone, this American icon was underestimated because of his appearance and speech. Like Blackstone, he would, when given his opportunity disprove all of it:

After the election he often rode, or sometimes walked, into Springfield to borrow Stuart's law books. When he first showed up at the office, he was timid and quiet, and Henry E. Drummer, Stuart's law partner, thought him 'the most uncouth looking young man I ever saw.' On one of these trips to Springfield, he attended an auction, where he picked up a copy of Blackstone's Commentaries and then, as he wrote later, he 'went at it in good earnest.' ...

With little else to do during the spring and summer of 1835 except deliver the mail twice a week, he could spend all his time on his law books. To judge from the advice he later gave other law students, he read Blackstone through twice. (50)

The role of Blackstone in post-Lincoln civil rights is noted by Amar in his book on the Bill of Rights with an interesting story:

The tripartite phraseology of the 1866 Freedman's Bureau statute--affirming the rights of 'personal liberty', 'personal security', and property--derived directly from Blackstone's influential chapter on the 'Absolute Rights of Individuals.' (Indeed, the sponsors of the sibling Civil Rights Bills in both house and senate, James Wilson and Lyman Trumbull, explicitly quoted from Blackstone affirming an individual right of the subject to 'hav [sic]

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arms' to protect his 'three great and primary rights, of personal security, personal liberty, and private property. and his ultimate right of 'self preservation.' ... Though narrower in scope than their American counterparts, the freedoms of press, petition, and peaceable assembly were, according to Blackstone, core common-law rights of 'person' and 'every freeman.' (51)

Thus, through his Commentaries, Blackstone was present at the United States Constitutional Convention, an invitation he would have hotly refused if offered.

It is one of the great ironies of American history that the scholarship of a Tory jurist provided the constitutional and intellectual framework for a new nation. (52) In the coming section, Part III, I argue the extension of his legacy to American education ethics.

### III. A Conversation with Blackstone--His Influence on Education Ethics

He looks to the right, toward the Speaker of the House's rostrum. His profile occupies the southeast corner of the United States House of Representatives chambers, between Grotius (Hugo Grotius, the great Dutch thinker who advanced natural law principles--all men are created equal and endowed by their creator with certain rights" expresses a natural law philosophy) and Napoleon (who ordered the creation of the Napoleonic Code for civil laws). The Thomas Hudson Jones sculpture depicts a youthful, confident man. The countenance captures a gaze that is well-pleased with his contribution to this new order. Indeed, the script below his likeness states:

[ILLUSTRATION OMITTED]

William Blackstone. English jurist. His Commentaries on the Laws of England constitute a standard textbook on the subject. His fame is perhaps even greater in the United States than in his native land. (53)

On the north wall of the United States Supreme Court, he stands between John Marshall (4th Chief Justice of the Court and author of *Marbury v. Madison* (54), the 1803 case that established the United States Supreme Court's claim to judicial review) and a winged figure representing the Rights of Man. Both of them look to Blackstone for guidance. He holds his left hand to his chin, his right holding a sheaf of lecture pages while he thinks about the ethical problem that has just been posed to him. To his far right is Napoleon Bonaparte, also waiting on him. To his far left is Grotius, then Louis IX (the French king canonized as St. Louis; he created the first court of appeals--*Curia Regis*--King's Court) and then King John, the king who was forced to sign the Magna Carta, the foundation of constitutional liberty in England).<sup>55</sup> There are other frieze images, of course, but the best-of-all-of-them, is the positioning and posturing of Sir William B. Blackstone.

[ILLUSTRATION OMITTED]

Herein I begin the daunting task of applying Blackstone's Commentaries to modern American educational ethical thought, an extension that, as noted in the beginning of my argument, has no precedent. To borrow from Blackstone the use of imagery in the construction of my argument, I will apply, generously, the life-giving devices of fiction in order to engage Blackstone in a conversation. Observe his pose within the frieze.

Let us assume the question he ponders is, "Did you contribute to the construction of ethics in American education law?"

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He lowers his hand and says, "My interest was in legal education. I spoke only briefly about schoolmasters."

Yes, we know. You did, however, introduce important ethical guidance for school administrators when you wrote:

[The father] may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then in loco parentis, and has such a portion of the power of the parent committed to his charge, viz., that of restraint and correction, as may be necessary to answer the purposes for which he is employed. (56)

We add: Your commentary created the lasting concepts of standards of care for school children that are foundational to the professional ethics of educators.

"How are you defining such ethics?" Blackstone asks us, glancing to his right at John Marshall.

We reply: All laws are a definition of conduct. You defined English common law within an architecture of your making and gave meaning to "the right of conduct" and to its consequences when one person's exercise of that right violates another's rights

Ethics, we continue, as defined by the great American philosopher-educator John Dewey is "the science that deals with conduct insofar as this is considered as right or wrong, good or bad." (57) In your Book 1: Of the Rights of Persons, you wrote that the first and primary end of human laws is to protect individuals 'in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature.' (58)

Moreover, those absolute rights became part of the founding of America. Jefferson, in the Declaration of Independence wrote:

When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. --That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed ... (59)

The same sentiment appears in the Preamble to the Constitution:  
We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general welfare, and secure the Blessings of Liberty, to ourselves and Posterity, do ordain and establish this Constitution for the United States of America. (60)

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"I opposed colonial independence. In fact, I stated that the rights of freemen should not attach to rebels," (61) Blackstone interjects, his gaze marbled.

Yes, we know. But look where you are standing now (A bit cheeky of us, to state the obvious). However, as to the question, 'Did you contribute to the construction of ethics in American education law?'. let us offer another observation.

"What of Aristotle and men of his following?" he observes, more to his liking.

Exactly, we respond: The duty of every citizen and the purpose of the state to foster the supreme good. You held that premise, as well. Our society is pluralistic now and it demands that kind of thinking even more. We could, in pursuit of Jefferson's "unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" and Morris. goal to "establish Justice, insure domestic Tranquility, provide for the common defense, promote the general welfare, and secure the Blessings of Liberty, to ourselves and Posterity" settle on a short list of basic ethical considerations.

"And what would the list contain?" Blackstone asks, at once warming to simplification but fully aware of its dangerous limitations.

We recommend these four ethical rules as standards for an ethical school and school leadership within such a school:

- Responsibility to care for each other
- Do no harm
- Do not be unfair
- Do not violate another's freedom (62)

"Primum non nocere. They sound Hippocratic," (63) Blackstone asserts, looking to his left, toward the winged statute Rights of Man.

Absolutely, we agree. Within our four rules, there is a public life of the community context. Thomas Green calls this context the five callings: The call of craft, the call of membership, the call of sacrifice, the call of memory, and the call of imagination. A mature conscience calls us to integrity in our work (the call of craft). It reminds us that sloppy and careless work is undeserving of us and serves others poorly ... The conscience of membership reminds us of our bonds and responsibilities to the community we belong to. By asserting primacy of the community over the individual, that education for a public life is the way to simultaneously form private conscience. The third call is the conscience of sacrifice, which calls us to go beyond self-interest. It is the desire to serve the good of others even at the cost of what one legitimately desires for oneself in the present. The fourth conscience is of memory. Through it we are rooted to and in the stories and traditions of our people and our place. The fifth is imagination. It allows us to claim solidarity with those who have been before us, to mourn their suffering and celebrate their humanity; to feel connected to other people we do not know personally; to feel responsibility for generations yet unborn. (64)

"I found such principles in common law," Blackstone says agreeably. "I was particularly fond of what you call the 'conscience of imagination.. I often noted the deep roots of customs as the foundation for law."

Ethos, we add eagerly, is Greek for--

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"Customs," he finishes our thought. "The *lex non scripta* as common law is properly called. But also, there is the *lex scripta*, the written, statute law. (65) Wherein does *lex scripta* reside in your ethics?"

Ah, you will approve of it, we assure him. It resides not only in statutes, but also in a matrix of history, research, administrative rules, and in professional codes of conduct, and, in court made law. As for statutes, we can choose any of the American states as an example. As I am from Idaho, let me use it to illustrate. By the way, Idaho and all but one of the American states, Louisiana (which adopted the Napoleonic Code), incorporated the essence of your Commentaries with a "common law in force" statute. For Idaho it is:

Idaho Statutes, Title 73 (66)

73-116. COMMON LAW IN FORCE. The common law of England, so far as it is not repugnant to, or inconsistent with, the constitution or laws of the United States, in all cases not provided for in these compiled laws, is the rule of decision in all courts of this state.

"Say you so?" Blackstone asks with some pride. "All but one?" Oh, yes. Here are some others:

New York Constitution, Article I, Section 14 (67)

Such parts of the common law ... as ... did for the law of said colony on the nineteenth of April, one thousand seven hundred seventy five ... shall be and continue the law of this state ... But all such parts of the common law ... as are repugnant to this constitution are hereby abrogated.

Florida Statutes 2.01 (68)

The common and statute laws of England which are of a general and not local nature with the exception hereinafter mentioned, down to the 4th of July, 1776, are declared to be of force in this state: provided the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the legislature of this state.

California Civil Code Sec. 22.2 (69)

The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State.

"You do me a kind service, sir, to show me these laws," Blackstone responds with obvious pride.

"Perhaps I misjudged the colonies. Obviously their progeny have not forgotten England. I wrote of such particular common laws which affect only the inhabitants of particular places."

There is a common law Amendment in our federal Constitution, we mention. "Say you so?" Blackstone responded, curious. Yes, it is this:

United States Constitution, Amendment VII (70)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

"I honored trial by jury. It is the very bedrock of freedom," (71) he said solemnly. True, we say, thinking



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of Zenger. (72)

"You said your educational ethics were before court?" Blackstone asked.

Many, many time, we respond. For example, one of the principles of ethics is fairness, or due process of law. You defined due process as

no freeman shall be taken or imprisoned but by the lawful judgment of his equals or by the law of the land ... [and] that by the petition of right ... no freeman shall be imprisoned or detained without cause shown, to which he may make answer according to law ... if any person be restrained of his liberty by order or decree of any illegal court, or by command of the kind's majesty in person, or by warrant of the council board, or of any privy council, he shall, upon demand of his counsel, have a writ of habeas corpus, to bring the body before the court of king's bench or common pleas, who shall determine whether the cause of his commitment be just, and thereupon do as to justice shall appertain ... Of great importance to the public is the preservation of this personal liberty; for if once it were left in the power of any, the highest, magistrate to imprison arbitrarily whomever he or his officers thought proper, there would soon be an end of all other rights and immunities." (73)

Within the context of due process of law, educational ethics have been defined by many state and federal courts and, especially by the United States Supreme Court. The right -conduct lesson for school administrators is formulaic--understandable notice, impartial investigation, impartial and fair decision making, impartial hearing. Ethical conduct requires, then, that an administrator maintain a balance between the rule of the management and the right of the individual. "Each administrative decision carries with it a restructuring of human life: that is why administration at its heart is the resolution of moral dilemmas." (74)

For the school administrator, this concept has been called the "Ethic of Justice" (75) wherein a focus on rights and law is "characterized by incrementalism, faith in the legal system, and hope for progress." (76) Faith in the legal system includes faith in locally elected school boards and their appointed administrators. The highest state courts and the United States Supreme Court typically allow great discretion to local boards in terms of making sound, ethical, due process decisions. For example, would application of the wrong local policy in a student discipline decision violate basic due process and, thereby, color ethical decision making? In *Board of Education v. McCluskey* 458 US 966, 1982, the United States Supreme Court said it did not, reversing a lower court that supported the student. Said the United States Supreme Court, "Federal courts are not authorized to construe school regulations. The Court of Appeals was ill advised to supplant the interpretation of the regulation of those officers who adopted it and are entrusted with its enforcement. A case may be hypothesized in which interpretation of rules is so extreme to violate due process, but this is surely not that case. The board's interpretation of its rules is reasonable." (77)

The same logic applied when the United States Supreme Court considered corporal punishment, even though the punishment was severe enough to leave contusions on the student's buttocks. (78)

Such decisions would not sit well with those who espouse the "Ethic of Critique" (79) which attempts to bring forward the "savage inequities" identified by activist educators like Jonathan Kozol and Ruby Payne. For decades, Kozol has visited and written about the nation's poorest schools, has raised the

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alarms-to-action, has lamented the lost dreams. As a Marxist centered scholar, he brings to our attention that our ethical positions are shallow. Kozol's 2006 tour of savage inequities observes that President George W. Bush promised:

I went to Washington to challenge the soft bigotry of low expectations," the president said again in his campaign for reelection in September 2004. 'It's working. It's making a difference.' It is one of those deadly lies which, by sheer repetition, is at length accepted by large numbers of Americans as, perhaps, a rough approximation of the truth. But it is not the truth, and it is not an innocent misstatement of the facts. It is a devious appeasement of the heartache of the parents of the black and brown and poor and, if it is not forcefully resisted and denounced, it is going to lead our nation even further in a perilous direction." (80)

Like Kozol, Ruby Payne has devoted her professional career to the study of neglected children. Payne's examination of generational poverty suggests that ethical schools and ethical school administrators may be in short supply, given the ravages of poverty. Payne has studied why students from generational poverty often fear being educated, the "hidden rules" within economic classes, discipline interventions that improve behavior, and resources that make a difference in success. (81)

Researchers like Payne and Kozol energize our ethics with reality.

In addition to the "Ethics of Critique" there is the "Ethic of Care." (82) In this capacity, educational leaders focus on relationships. The "Ethic of Care" considers consequences of decision making, the promotion of trusting relations, and the integration of reason and emotion. 83 When the three ethics--Justice, Critique, and Care--are combined, they produce clarity for responsible decision making.

"Responsibility?" Blackstone interrupted. "You speak of duty, sir, which is a subject of considerable depth and legality. I wrote expansively of duty. It is tortious."

Yes! we exclaim. And therein is where you made your greatest contribution to the construction of ethics in American educational law.

"In civil tort or criminal tort?" Blackstone inquired.

Both, we answer.

The formula for tort law is simple and elegant. It is duty, breach, causation, and damage. It begins with ethics--a duty to perform to a standard of conduct; it describes the abuse of ethics--a failure to act according to the standard of conduct; and it considers the end-game when ethical conduct is abused--the recovery of loss by the plaintiff. For educators the standard of care is considered a high one by courts because educators deal with children--ethically, educators have a "special relationship" that demands it.

We can say that statutory ethics found within state and federal codes and within professional codes define duty. For example, drawing again from Idaho's statute, the state legislature created a professional standards commission to rule on alleged violations of ethical conduct:

33-1254. Professional Codes And Standards (84)

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The Professional Standards Commission shall have authority to adopt recognized professional codes and standards of ethics, conduct and professional practices which shall be applicable to teachers in the public schools of the state, and submit the same to the state board of education for its consideration and approval. Upon their approval by the state board of education, the professional codes and standards shall be published by the board.

The Commission is further guided by statute which defines duty--ethical conduct--albeit in negative terms:

### 33-1208. Revocation, Suspension, Denial, Or Place Reasonable Conditions On

#### Certificate -- Grounds. (85)

1. The state board of education may [my emphasis] deny, revoke, suspend, or place reasonable conditions on any certificate issued [for] the following grounds: ... Gross neglect of duty; incompetency; breach of the teaching contract; making any material statement of fact in the application for a certificate, which the applicant knows to be false; revocation, suspension, denial or surrender of a certificate in another state for any reason constituting grounds for revocation in this state; conviction, finding of guilt, withheld judgment or suspended sentence; in this or any other state of a crime involving moral turpitude; conviction, finding of guilt, withheld judgment, or suspended sentence in this state or any other state for the delivery, manufacture or production of controlled substances or simulated controlled substances; guilty plea or a finding of guilt, notwithstanding the form of the judgment or withheld judgment in this or any other state, of the crime of involuntary manslaughter; any disqualification which would have been sufficient grounds for refusing to issue or authorize a certificate, if the disqualification existed or had been known at the time of its issuance or authorization; willful violation of any professional code or standard of ethics of conduct, adopted by the state board of education; kidnapping of a child ...

2. The state board of education shall permanently [my emphasis] revoke any certificate ... shall deny the application for issuance of a certificate of a person who pleads guilty to or is found guilty of, notwithstanding the form of the judgment or withheld judgment, any of the following felony offenses against a child: The aggravated assault of a child; assault with intent to commit a serious felony against a child; aggravated battery of a child; injury or death of a child; sexual abuse of a child under sixteen (16) years of age; ritualized abuse of a child under eighteen (18) years of age; sexual exploitation of a child; possession of photographic representations of sexual conduct involving a child; lewd conduct with a child under the age of sixteen (16) years; sexual battery of a minor child sixteen (16) or seventeen (17) years of age; sale or barter of a child for adoption or other purposes; murder of a child, or the voluntary manslaughter of a child; kidnapping of a child; importation or exportation of a juvenile for immoral purposes; abduction of a person under eighteen (18) years of age for prostitution; rape of a child--

"Enough," Blackstone declared. "I wrote on all of these crimes and actions. (86) They clearly establish duty, breach, and damage, and enumerate ethical conduct. Your guild should have prevented such conduct."

Our professional associations, or guild, as you prefer, have attempted to do so. We have promulgated codes of ethics based on the statutes and research and historical documents, all of which are traceable to your Commentaries. Within educational leadership, for instance, a national commission (87) created six key principles or standards for leadership behavior. Within the standards, there are specific references to ethics, but one could take the entire document as an ethical conduct directive. States have adopted and

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adapted the national standards. Idaho calls them Foundational Standards for School Administrators. (88) Within the Idaho version, school leaders are required to adhere to the state's Teacher Code of Ethics and to the Administrators Code of Conduct.

"Tis well," Blackstone commented. "You included judgments in sources that shape ethical conduct. I addressed courts (89). Have your courts ruled on ethical matters?"

We answer: Most certainly. Especially in the area of discrimination.

Our federal courts, including the United States Supreme Court, have handed down many rulings that guide ethical conduct. Perhaps a striking illustration can be found in a mixture of United States Supreme and federal district court cases: *Davis v. Monroe County School Board* 574 S.E.2d 482 (2002), *Gebser v. Lago Vista Independent School District* 524 U.S. 274 (1989), *Franklin v. Gwinnett Public Schools* 503 U.S. 60 (1992) and *Oona v Mccafferty* 143 F.3d 173 (1998).

Each case dealt with ethical conduct by school administrators and teachers. Each case dealt with discriminatory practices in the form of sexual harassment. But not all of the cases found for the plaintiff.

In *Gebser*, a student had a sexual relationship with a teacher. She did not report the relationship to school officials. After the student and the teacher were discovered having sex, the teacher was arrested and the district fired the teacher. The student and her mother filed under Title IX of the Education Amendments Act of 1972, claiming damages. The Federal District Court granted the district summary judgment and the Fifth Circuit affirmed. The courts held, then, that district are not liable for sexual harassment unless an employee with supervisory power over the employee actually knew of the abuse, had the power to end it, and failed to do so. (90)

The teacher clearly violated his code of ethics (91) which may have been the National Education Association (NEA), which states in part:

The educator strives to help each student realize his or her potential as a worthy and effective member of society. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. In fulfillment of the obligation to the student, the educator ... Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety. Shall not intentionally expose the student to embarrassment or disparagement. Shall not on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, family, social or cultural background, or sexual orientation, unfairly ... Shall not use professional relationships with students for private advantage. (92)

In *Franklin*, on the other hand, the factual record was the opposite. Here, the student was subjected to continual sexual harassment by a coach/teacher. The allegations included the teacher engaged her in sexually oriented conversations about her experiences with her boyfriend and whether she would consider having sex with an older man; that the teacher forcibly kissed her on the mouth in the school parking lot; that he telephoned her at her home and asked for dates; and that, on three occasions he interrupted a class, had the student excused and took her to a private office where he forced intercourse. The complaint alleged that though they became aware of the abuse, the administrators took no action to halt it and actually discouraged the student from pressing charges. The teacher resigned, however, and the school

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closed its investigation. (93)

Damages were, of course awarded in Franklin.

A similar factual record appears in Oona. In this case, a sixth grader alleged: A student teacher fondled, kissed, straddled and otherwise inappropriately touched Oona and other students. He also allegedly called Oona "Oona Noodles." The complaint alleged that some of this inappropriate conduct actually took place in the presence of the supervising teacher and school principal, and that Oona's parents had demanded that the principal remove the student teacher from the classroom, which he refused to do ... The harassment by male students allegedly occurred throughout the fall and winter of the school year. Boys allegedly referred to girls' body parts as "melons" and "beavers," called the girls slang terms for whores, and persisted in other types of offensive behavior. According to one particularly disturbing allegation, a boy struck Oona in the face and told her to "Get used to it." After the parents complained that a teacher allegedly retaliated against Oona by lowering her grade; when Oona's mother filed a tort claim against the district, the teacher allegedly retaliated further by withholding awards Oona had won. Oona's parents removed her from the school at the end of the school year and began home schooling. (94)

The district defendants claimed immunity because, at the time of the incidents, they were not aware that federal law required them to protect students from such harassment. The court ruled they were not entitled to immunity

In Davis, the factual record is bizarre and goes to the heart of our discussion on the need for ethical conduct. In this case, the parent of a fifth grade girl claimed the administration had failed to respond in any way to five months of complaints about in-school sexual harassment by another student, a boy. The harassment was verbal and included numerous acts of objectively offensive touching. The parent alleged the harassment had a concrete, negative effect on her daughter's ability to receive an education and that the school board made no effort whatsoever either to investigate or to put an end to it. The parent alleged the boy attempted to touch the student's breasts and genital area and made vulgar statements such as " I want to get in bed with you' " and " 'I want to feel your boobs.' The student reported each of these incidents to her mother and to her classroom teacher who allegedly assured them that the school principal, had been informed. Nonetheless, the parent contended that, notwithstanding these reports, no disciplinary action was taken. The boy's conduct allegedly continued for many months and included ... purportedly placing a door stop in his pants and proceeded to act in a sexually suggestive manner toward the student during physical education class. More incidents were reported: one allegation included that the boy allegedly rubbed his body against the student in the school hallway in a sexually suggestive manner. The string of incidents

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finally ended in mid-May, when the boy was charged with, and pleaded guilty to, sexual battery for his misconduct. The complaint alleges that the girl had suffered: her previously high grades allegedly dropped as she became unable to concentrate on her studies; her father discovered that she had written a suicide note; and at one point, the girl said "I didn't know how much longer I could keep him off me." (95)

The principal at this school reportedly told the plaintiff's that he was taking care of the matter by threatening the boy "a little harder."

In *Davis*, the court established the "deliberate indifference" standard. Under this standard, the educator is liable for damages and may be personally liable if the claim is successful under 42 United States Code 1983, which states:

42 United States Code 1983 (96)

Every person who under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suite in equity, or other proper proceeding for redress.

This statute has also become famous as the ethics-based federal law for filing complaints in special education cases. It has successfully produced damages for due process, placement in special education, and services under the Individuals with Disabilities Education Act. (97)

When plaintiffs are not using the "1983" statute, they bring complaints under Title IX (98) of the Education Amendments Act of 1972, which has mistakenly been called the "equal opportunity act for women's sports." In actuality, the Act provides a broad based coverage of protection for any student who is the victim of discrimination:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any [emphasis added] education program or activity receiving Federal financial assistance . . .

These concepts have, of course, a United States Constitutional basis in the 14th Amendment. (99) This Amendment, known as the Equal Protection Clause, was an outgrowth of the Civil War, extended federal constitutional protection to citizens who were subjected to discrimination by state laws. It reads:

14th Amendment to the United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

We conclude: Each state, of course, has similar constitutional or statutory language now, but complaints are brought under the federal laws for reasons of case-law precedence.

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"Your thesis, sir, was that my Commentaries had influence the construction of ethics in American education law," Blackstone recounted. "Were you in court, you would have submitted a summation document for evidence."

We nod: Yes, we have such a chart.

"Produce it, then," Blackstone directed.

We introduce, in summation, a simple chart that reveals the forces that shape ethics in education--from the deontological to the axiological to the teleological. (100) Each grows out of the center, out of the Commentaries, which are the heart, the well-spring. I contend that this "widening gyre" (101) can hold because of Blackstone's legacy.

[ILLUSTRATION OMITTED]

The gyre of forces that shape educational ethics and their legacy to Blackstone's Commentaries on the Laws of England--a "Unified Theory" illustration of Blackstone's influence on American educational ethics. Created by the author for the 2006 Oxford Roundtable based on the work of Robert J. Starratt, *Building An Ethical School, A Practical Response to the Moral Crisis in Schools* 56 (1994). Figure used with the permission of Robert J. Starratt.

### III. Blackstone in literature and film and the American hero

We watch the great man resume his pose, his left hand going back to his chin as he reflects on our argument, waiting to see where our dialogue will go next.

We add: We can say, moreover, that the Commentaries shaped the development of the American literary and film hero. We argue this position from the foundational concept that ethics is about goodness and its victory over evil.

"What evidence exists for this claim?" Blackstone asks, lowering his hand again.

We Americans love a drama that pits good against evil.

"As do all men," Blackstone chided.

Yes, but we consider the American story unique. There has never been another democracy with such theatre in its birth. And your Commentaries were, in so many way, the script for it. Why even your Prime Minister, Edmund Burke, in Parliament stated:

I have been told by an eminent Bookseller, that in no branch of his business, after tracts of popular devotion, were so many books as those on the Law exported to the Plantations. The Colonists have now fallen into the way of printing them for their own use. In hear they have sold as many of Blackstone's Commentaries in America as in England. (102)

Your Commentaries were essential to the founding of the nation and the building of the American character, born in the lives of the Founding Fathers, our first generation of national heroes, and carried forward into the nation's literary and film genius.

"My desire was to reform English legal education," Blackstone protested. We know: But consider this:

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In England the form of legal education was fixed. The Inns of Court had their well established method of study. The introduction of a new book like Blackstone was not easy, nor was it considered necessary, but in the Colonies, where there were no schools of law, the Commentaries were hailed as absolutely essential to any legal education and as the only book in which extended legal knowledge could be easily acquired. More and more men in the Colonies were choosing the law as a profession, and most students felt that the mastery of Blackstone was an entirely adequate preparation for the bar. Littleton's Book on Tenures, Coke's huddled annotations of Littleton, Sir Matthew Hale's two treatises, one on the criminal law, the other on the common law, were now supplanted by a book easily read, clear and luminous in its statements and covering apparently the whole field of the law. Every word of it was taken as legal gospel. From that time began the superstitious reverence for Blackstone which could never find lodgment except in a colonial type of mind. It was to continue through colonial and provincial thought for many years to come. Out in the West Blackstone was far more popular than Kent, because the former was much more condensed and had not so much terrifying Latin and French as Kent presented. (103)

And even Chancellor Kent, that prominent American jurist of the early 19th century famously said that he "owed his reputation to the fact that when studying the law ... he had but one book, Blackstone's Commentaries, but that book he mastered." (104)

Mastering the law is part of America's greatness. We pride ourselves in that: That we are a nation of laws. Our great heroes, therefore, are men who mastered the ethical essence of law, over the temptations of wrong-doing. How else can I remark on the importance of your work to this end? Perhaps this:

In the fourteen centuries since Justinian's Institutes, Blackstone's Commentaries are the most important attempt in western civilization to reduce to short and rational form the complex legal institutions of an entire society. And Justinian's role in the reception of the civil law in western Europe was Blackstone's in the reception of the common law in America ... In the first century of American Independence, the Commentaries were not merely an approach to the study of law; for most lawyers they constituted all there was of the law. The influence of Blackstone's ideas on the framers of the Federal Constitution is well known ... For many generations of American lawyers from Kent to Lincoln, the Commentaries were at once law school and law library. In view of the scarcity of lawbooks during the earliest years of the Republic, and the limitations of life on the frontier, it is not surprising that Blackstone's convenient work became the bible of American lawyers. (105)

We declare: You brought law and order to the frontier! One of the great American literary heroes is an attorney, named Atticus Finch. In the novel, *To Kill A Mockingbird*, he represents an innocent black man who is charged with attacking a white woman. His character is an example of the ultimate American hero-



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-someone who practices, with unwavering spirit the highest forms of ethical conduct to the challenges of the worst kind of men. Atticus Finch, portrayed by Gregory Peck, fulfills his duty, with compassion for what is right. Of interest, you are mentioned in the novel:

"... Cal, did you teach Zeebo?"

"Yeah, Mister Jem. There wasn't a school even when he was a boy. I made him learn, though."

Zeebo was Calpurnia's eldest son. If I had ever thought about it, I would have known that Calpurnia was of mature years--Zeebo had half-grown children--but then I had never thought about it.

"Did you teach him out of a primer, like us?" I asked.

"No, I made him get a page of the Bible every day, and there was a book Miss Buford taught me out of--bet you don't know where I got it," she said.

We didn't know.

Calpurnia said, "Your Granddaddy Finch gave it to me."

"Were you from the Landing?" Jem asked. "You never told us that."

"I certainly am, Mister Jem. Grew up down there between the Buford Place and the Landin'. I've spent all my days workin' for the Finches or the Bufords, an' I moved to Maycomb when your daddy and your mamma married."

"What was the book, Cal?" I asked.

"Blackstone's Commentaries."

Jem was thunderstruck. "You mean you taught Zeebo outa that?"

"Why yes sir, Mister Jem." Calpurnia timidly put her fingers to her mouth.

"They were the only books I had. Your granddaddy said Mr. Blackstone wrote fine English--" (106)

Atticus Finch is the archetypal American hero--a lawyer with ethics!

Gregory Peck portrayed another character in another great American novel. Your Commentaries figure into that story line as well. The novel is Herman Melville's *Moby Dick*. In this book there are many heroes--common men of the sea who search for the great white whale. In one passage, both Bracton and you are quoted as the "Sayers of the Law" in that the fish that the sailors have taken is, by law, the property of the king.

"De balena vero sufficit, sir ex habeat caput, et regina caudam." (107)

Latin from the books of the laws of England, which taken along with the context means, that of all whales captured by anybody on the coast of that land, the King, as Honorary Grand Harpooneer, must have the head, and the Queen be respectfully presented with the tail....

"Hands off! This fish, my masters, is a Fast-Fish. I seize it as the Lord Warden's." Upon this the poor

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mariners in their respectful consternation--so truly English--knowing not what to say, fall to vigorously scratching their heads all around; meanwhile ruefully glancing from the whale to the stranger. But that did in nowise mend the matter, or at all soften the hard heart of the learned gentleman with the copy of Blackstone. At length one of them, after long scratching about for his ideas, made bold to speak,

"Please, sir, who is the Lord Warden?"

"The Duke."

"But the duke had nothing to do with taking this fish?"

"It is his." (108)

"But this true!" Blackstone insisted. "Bracton quotes the common law, as I did. (109) The king's right cannot be denied. Where is heroism among men such as these?"

We explain: The captain of the ship, Captain Ahab leads them after the great white whale, a fish that took one of his legs. The Captain is portrayed by the same actor, Gregory Peck, who portrayed Atticus Finch. The story is told by a member of the crew, Ishmael, an educated man who knows the laws of England. Together, they battle evil, both within themselves and within the sea.

"I do not accept it," Blackstone intones with solemnity. And then he adds, "Do you have other evidence to support your thesis?"

We do: Case law is made with precedence. Attorneys search it for a ruling that will give credence to their thesis. Your Commentaries is the very foundation of such research. In a number of literary scenes, which were converted to film, this love of the law is revealed through the actions of an ethics-driven hero. For example, there is a novel written by a judge called

Anatomy of a Murder.

"A well-formed title," Blackstone observes. "It speaks of science. The law is a science (110) and that thesis is what compels the organization of the Commentaries."

We say: True, thanks to you. In this book, the attorney is portrayed by the great American hero actor Jimmy Stewart who represents a soldier accused of killing a man. Stewart's character searches for a legal precedent that supports his client's insanity argument. In the Commentaries, you establish the precedence (111) which comes down through the years and allows our hero to win the case for the soldier. This movie has the very best court room drama ever filmed, which includes a very wise judge, of course.

In desperation I had begun doggedly rereading all the old landmark cases on insanity in Michigan. Surely, I thought, if Michigan didn't accept the doctrine of irresistible impulse as a defense to crime then there must at least be some old case, somewhere, where the proposition had been urged and turned down.... suddenly, from out of the parched and yellowed old page of fine print, there had leapt out at me a phrase in block letters two feet high: "If the defendant was not capable of knowing he was doing wrong in the particular act, or if he had not the power to resist the impulse to do the act ... that would be an unsound mind." I swallowed and shut my eyes and shook my head and looked again--lo the flag was still there ...

... "Quick, Polly--d-dig out People versus Durfee, 62 Michigan 487. I think we're in; I think we're in...."

"First, Polly, it traces the history of the leading old English M'Naghten (112) case which, as we know,

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established the classic test of insanity still prevailing in most states, that is, whether the defendant at the time of doing the act knew the difference between right and wrong...." (113)

"It is very old law," Blackstone states, "'twas established in response to public executions of the insane during the bloody reign of Henry the Eight." (114)

We add: By the way, Captain Ahab was insane, some say.

"Then I am more sympathetic to his inclusion in your thesis," Blackstone replied. We continue: You would also approve, we think, of a novel-turned-to-film called *The Verdict*. Here, the famous American hero actor Paul Newman portrays an attorney, Frank Galvin, who wins a medical malpractice case against a physician who improperly drugs a young woman, thereby placing her into an irreversible coma. (115)

"I noted the malpractice for such injuries (116)," Blackstone stated firmly.

We note: This hero movie was one of Newman's best performances. Many critics believed he should have received an Oscar for it.

"An Oscar?" Blackstone queries. "What is its value?" We explain: Very little, actually. It is merely an honor given for the best performance.

"I do not recall one ever being given to Burbage (117)" Blackstone muses.

We respond: No, he never received one, because--

"Then the Oscar is of little consequence," Blackstone rules. "Should you be able to provide one more example, I may be convinced of your thesis. One that fulfills Bracton's maxim of 'To rule well a king requires two things, arms and laws.'" (118)

We pause to think.

"Well?" Blackstone says with a hint of smirking impatience.

We propose: There are two possibilities. The first is *High Noon* (119). In this story a town marshal portrayed by film legend Gary Cooper must stand alone and battle three gunmen after everyone in town, including the local judge, refuses to help him. It--

"It will not do," Blackstone interjects, "If the judge, as symbol of the written law, does not stand with a man of arms." Blackstone slightly tilts his heavily wigged head, giving us a few more moments to produce.

We do: The other is a famous western, written by a woman. We watch for a reaction, but Blackstone remains passive, waiting.

We continue: The book was made into an equally famous movie, starring two of the greatest American actors ever to live. You have already heard about one of them, Jimmy Stewart. His "co-star" if it is ever possible to apply that term was the immortal John Wayne. In this novel and movie, Stewart portrays the lawyer and Wayne portrays, shall we say, Bracton's man-of-arms. It is the only kind of role Wayne ever played. He is the ultimate gun-toting American hero. The name of the book and the movie is *The Man Who Shot Liberty Valance* (120).

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"An unusual title," Blackstone murmurs, his left eyebrow arching.

We concur: An unusual movie, as well. For, you see, in the movie, the lawyer is from the east, coming west, to--a better way to understand the plot is with the song: We sing the title song, doing our best to render the haunting voice of the young man who recorded it:

The Man Who Shot Liberty Valance

When Liberty Valance rode to town the womenfolk would hide, they'd  
hide

When Liberty Valance walked around the men would step aside  
'cause the point of a gun was the only law that Liberty understood  
When it came to shootin' straight and fast--he was mighty good.  
From out of the East a stranger came, a law book in his hand, a man  
The kind of a man the West would need to tame a troubled land  
'cause the point of a gun was the only law that Liberty understood  
When it came to shootin' straight and fast--he was mighty good.  
Many a man would face his gun and many a man would fall  
The man who shot Liberty Valance, he shot Liberty Valance  
He was the bravest of them all.

The love of a girl can make a man stay on when he should go, stay  
on

Just tryin' to build a peaceful life where love is free to grow  
But the point of a gun was the only law that Liberty understood  
When the final showdown came at last, a law book was no good.  
Alone and afraid she prayed that he'd return that fateful night,  
that night

When nothin' she said could keep her man from goin' out to fight  
From the moment a girl gets to be full-grown the very first thing  
she learns

When two men go out to face each other only one returns  
Everyone heard two shots ring out, a shot made Liberty fall  
The man who shot Liberty Valance, he shot Liberty Valance  
He was the bravest of them all. (121)

"The lawyer committed murder?" Blackstone asks, balancing a liking for the song with the ethics of an officer-of-the-court.

We smile and inform: No, although he was prepared to do so in a man-to-man gun battle with the villain, Liberty Valance, portrayed by the easy to hate Lee Marvin. No, the lawyer did not shoot and kill Liberty Valance.

"The man-of-arms, this John Wayne character did so, then," Blackstone concludes. We confirm: Yes, that is how the villain is dispatched, with the combined force of law and arms, just as Bracton demanded.  
(122)

We wait.

Finally, he speaks.

"I accept your thesis," Blackstone rules favorably. His left hand goes to his chin and he returns to the pose

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in whence in found him.

We gazed up at him, studying his pose and committing it to memory. In the silence, we can still hear his words and we marvel at the history of the man and at the history of the nation that brought Sir William Bertie Blackstone to this timeless portico. Blackstone, we muse, defender of the rights of man and maker of nations.

[ILLUSTRATION OMITTED]

### IV. Conclusion

The Commentaries are not seriously studied in many American law schools today. They have been marginalized, it appears, to the role of history. As for students of education, they are not studied at all. Nonetheless, they remain a fixture in the history of America's Founding Fathers. At the core, the Commentaries are about "rights" and "wrongs"--familiar words for educators; essential words for a conversation about ethics; symbolic words for hero definition.

I argued in Part I that the Commentaries provided America's Founding Fathers an essential legal structure for the United States Constitutional.

In Part II, I contended the Commentaries shaped (unbeknown to education scholars and practitioners alike) codes of professional ethics for American school administrators via association standards, research, and selected case law.

Finally, in Part III, I fictionalized a conversation with Blackstone to connect Commentaries as bedrock script-writing for the literary and celluloid creation of the American hero.

As for my findings in Part III, Blackstone's Commentaries do, in fact, exist in some of America's greatest literature and indirectly in great American films about lawyers and the American hero, though in the latter milieu one must approach the matter with the embracing heart-and-mind of a true movie fan. I could have argued a Dickinsonian tradition (123) in this part, but I considered the American likes of a gallery of heroes sufficiently convincing.

As an expression of comprehensive support for how the Commentaries and Blackstone remain as the deep undercurrent in the historical, legal, literary, and ethical tributaries consider this overarching, integrating observation of my argument for Blackstone's influence on educational ethics, made in 1927:

A full appreciation of matters which go so vitally to a correct understanding of the law requires more than a mere knowledge of the history of case-law and legal institutions; it requires an understanding of social history and development as well.... The background of the law, it should be understood, consists not merely of the adjudicated cases, not merely in finding out how this judge decided on this state of affairs.... but it requires the competent lawyer .... to steep his mind in the background of the law and the background of the literature which explains its growth, the true character and scope of its principles, the true method and spirit of its application, which is to be found in the history of America and England. It is to be found in the literature and life and the social development out of which the common law has grown.

The background of the law is found in Chitty and Coke and

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Blackstone, and Marshall and Kent and Story; but it is also found in Milton and Shakespeare and Chaucer, and Spenser and Hawthorne and Emerson and Bancroft and Parkman and all the great array of Americans who made their country's literature and who have been for the last century gradually building up the noble structure of recorded American history.

Nor are history and literature enough. If law is in fact mainly a matter of purposes, then to the proper application of it an understanding and analysis of human purposes and the meaning and significance of human life and effort is fundamental. This is the field of ethics, or, in a broader sense, of philosophy, which is the study of value and meanings; and no one can long have studied either dogmatic law or the history of legal institutions without realizing how he meets these questions of value and meaning in almost every knotty point. The task is not to discover some philosophical system which will automatically unlock every difficulty with the easy key or a catch-word drawn out of Locke or Spenser or Mill; but rather to come to a realization of the challenges which human life has thrown down to nature in every age and under all types of institutions, and to be alive to the alternatives of choice and what they severally imply. No less important is an application of the limitations of human thinking in its search after certainties; a study of Kant and James and Dewey would prove a potent inoculation against that mistaking of abstractions for realities with which some 'practical' lawyers and judges seem so chronically infected. Speaking of the superiority for even practical purposes of a study of the ultimate branches of knowledge over a mere intensive development of technical learning, a great lawyer said long ago: 'If you will have a tree bear more fruit than it hath used to do, it is not anything you can do to the boughs, but it is the stirring of the earth and putting new mould about the roots that must work it.' (124)

As noted in Part I, Blackstone's Commentaries certainly bore fruit in America and the legal earth of its roots were tilled by our Founding Fathers, despite the fact that Blackstone personally resisted any such transplanting and grafting that assisted the creation of America. (125) Moreover, the Commentaries continued to produce over decades in areas such as suffrage and speech (126) and questions of Presidential immunity. (127) Importantly, the current United States Supreme Court and its attending scholars and political watchdogs are debating the role of international law in U.S. court decisions. Blackstone "relished the study of foreign law." (128) It will be interesting to observe the development of this debate in the hands of Justice Ruth Bader Ginsberg who favors the application of foreign law principles in U.S. court rulings; a position the new Chief Justice, John Roberts, opposes. (129)

As for Part II, the fruit of Blackstone in the plantations of ethics, including education, is abundant. The common law legacy of the Commentaries firmly established the concept of negligence as a field for ethics litigation and adjudication. The pursuit of ethics is energizing to any profession, but especially to education wherein

.... general ethical theories have a power to touch our hearts as well as our brains: they act on us (in psychological jargon) "affectively" as well as "cognitively." Between appeals to natural

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reason, cardinal virtues, and scriptural authority, the operative differences are thus not ones of intellectual cogency alone. In different contexts, arguments of different sorts have power to carry conviction with us, win our allegiance, and mobilize our springs of moral action. (130)

The ethics of American education are much like the common laws of a people. Just as the common law includes *lex scripta* and *lex non scripta* (the written law and the unwritten law), ethics includes *ethos scripta* and *ethos non scripta* (the written and unwritten codes of conduct). The origins of *ethos scripta* are found in the Commentaries and their current legal form is now placed in policy, professional codes, statutes, case law and constitutional history. The origins of *ethos non scripta* are discoverable in educational research and observable with individual, school, district, community and cultural performance. (131)

Working the concept of *ethos scripta* and *ethos non scripta* into a psychology of culture building, a connection can be made to Maslow (132) and his concept of eupsychian (good-souled) management. Transferring Maslow's work to education produces a simplistic yet effective geometry for an ethical model that captures my argument:

[ILLUSTRATION OMITTED]

Wherein Blackstone's common law is the legal foundation and cultural heuristic research is the professional educator foundation that ascends to "above all do no harm".

History, law, ethics, education are inseparable. Blackstone's Commentaries, for the purpose of my article, were the binding force among them and it would be difficult to imagine the strength of their integrative force without Blackstone.

As I prepare to "Switch off the lights," in the basement of the Idaho Supreme Court Library, I breathe in Blackstone's dust motes one more time and conclude near where I began: The ship of American democracy rode an Oxford current to its many destinations which included unscheduled ports-of-call for school leadership and the arts. Such landings populated the educational landscape with an intellectual richness that endures today and, dare I say, forever.

"Did Blackstone Contribute to the Construction of Ethics in American education law?" I say the answer is a resounding "Yes!"

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Russell A. Joki, Professor of Educational Leadership, University of Idaho  
Kathy Canfield-Davis, Assistant Professor of Educational Leadership, University of Idaho.

(1) Charles Dickens, *David Copperfield* 1 (1850).

(2) Ronald W. Rebores, *The Ethics of Educational Leadership* 150-152 (2001). Rebores uses Bentham's

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essay, *An Introduction to the Principle of Morals and Legislation* as a reading on utilitarianism wherein "every action must be judged by the degree to which it contributes to happiness."

(3) HeinOnline is an electronic compilation of legal documents. See the Legal Classics section of Hein for materials of interest to historians and legal researchers.

(4) *Chitty's Blackstone, v* (1832). A "bowyer" is a craftsman who could make a functional bow. See <http://www.thebeckoning.com/medieval/crossbow/xbow-def.html>

(5) Charles Viner (1678-1756), jurist, founder of the Vinerian Professorship, compiler of *Abridgement of Law and Equity* (1742-53). Blackstone was named the first Vinerian Professor of English Law in 1758. Justice B. H. McPherson, CBE, Queensland, Australia, claims that Viner attended a Blackstone lecture and, inspired, dedicated the *Abridgement's* proceeds to endow a chair for Blackstone. Available at [www.courts.gld.gov.au/publications/articles/speeches/2005/mcpherson240205.pdf](http://www.courts.gld.gov.au/publications/articles/speeches/2005/mcpherson240205.pdf)

(6) Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* 109 (1998).

(7) Forrest McDonald wrote that, "Blackstone's Commentaries were studied by virtually every American lawyer, and by many non-lawyers as well: the number of copies sold in America was several times the number of lawyers and James Madison could refer to the work as 'a book which is in every man's hands.'" Forrest McDonald, *Alexander Hamilton, A Biography* 57 (1979).

(8) AP Breaking News, "Text Of John Roberts Hearing." The case is *Kilo v. New London*, 545 U.S. 469. Available at <http://sfgate.com/cgi-bin/article.cgi?f=/n/a/2005/09/13/national/w090540D61.DTL>

(9) Available at <http://www.law.cornell.edu/supct/html/04-108.ZS.html> There have been dozens of law school journal articles written on this case. One worth reading is Gideon Kanner, "The Public Use Clause: Constitutional Mandate Or "Hortatory Fluff"?" 33 *Pepperdine Law Review* 335 (January, 2006).

(10) James Clitherow, Blackstone's brother-in-law and first biographer, blamed Blackstone's failure in the practice of law on "not having any powerful friends or connections to recommend him." The truth lies closer to Blackstone's indifferent abilities in court. "My temper, constitution, inclinations and thing called principle, have long quarreled with active life," he wrote in July 1753, "and have assured me that I am not made to rise in it." Wilford Prest, "Blackstone On Judges; Blackstone As Judge," Paper presented at the 23rd Annual Australia and New Zealand Law and History Society Conference, Murdoch University, Western Australia (2-4th July, 2004) Available at <http://www.murdoch.edu.au/elaw/issues/v11n4/prest114.html>

(11) "William Blackstone, A Biography", available at <http://www.answers.com/topic/william-blackstone>

(12) "Benjamin Franklin: Major Events In His Life" at <http://odur.let.rug.nl/~usa/B/bfranklin/frevents.htm>

(13) *Supra* 2, v.

(14) "Medieval Schools And Universities". This site provides an interesting comment about the founding of Oxford University, where Blackstone schooled and taught and attained his fame. Legend has it that Oxford University was founded by King Alfred in 872. A more likely scenario is that it grew out of efforts begun by Alfred to encourage education and establish schools throughout his territory. There may have been a grammar school there in the 9th century. A grammar school was exactly what it sounds like; a place for teaching Latin grammar. The University as we know it actually began in the 12th century as

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gatherings of students around popular masters. The university consisted of people, not buildings. The buildings came later as a recognition of something that already existed. In a way, Oxford was never founded; it grew. Cambridge University was founded by students fleeing from Oxford after one of the many episodes of violence between the university and the town of Oxford." At [http://www.britainexpress.com/History/Medieval\\_Schools\\_and\\_Universities.htm](http://www.britainexpress.com/History/Medieval_Schools_and_Universities.htm)

(15) Supra 2, vi.

(16) "A History Of The Carthusian Order". Available at [http://www.answers.com/main/ntquery?method=4&dsid=2222&dekey=Cathusian&gwp=8&curtab=2222\\_1&linktext=Cathusian](http://www.answers.com/main/ntquery?method=4&dsid=2222&dekey=Cathusian&gwp=8&curtab=2222_1&linktext=Cathusian)

(17) Supra, 2 vi. According to Chitty's Blackstone, his talent was recognized at Charterhouse where he "obtained Mr. Benson's gold prize medal of Milton, for verses on that poet."

(18) Touchstone Pictures (1989) The popularity of this film for educators is evinced by the fact that it is used as supplement for teaching poetry to high school students and as training film for supervision and evaluation of teachers.

(19) "Making Sense Of Metaphors: Visuality, Aurality, And The Reconfiguration Of American Legal Discourse", 16 Cardozo Law Review 241 (1994). Available at [http://www.pitt.edu/hibbitts/meta\\_p2.htm](http://www.pitt.edu/hibbitts/meta_p2.htm)

(20) Columbia Pictures (1972) An interesting note: Then President Richard Nixon convinced the director, Jack Warner, to eliminate the song "Cool Conservative Men" because Nixon thought it made too much fun of "the right wing" members who participated in the Constitutional Convention. Available at <http://povonline.com/notes/Notes052603.htm>

(21) The full poem can be difficult to find online. It is an interesting mix of metaphor and meter, some lines are much better than others. Yet it clearly demonstrates that Blackstone enjoyed writing poetry. Available at [www2.lib.uoguelph.ca/resources/ebooks/Bachelors\\_Wife/Bachelors\\_text\\_pt2.htm](http://www2.lib.uoguelph.ca/resources/ebooks/Bachelors_Wife/Bachelors_text_pt2.htm)

(22) Supra 7. According to Clitherow, Blackstone's first application to Oxford failed for political reasons--Blackstone apparently supported the wrong candidates. But, the Vinerian chair lifted the "intervening cloud" and Blackstone's "great genius ... broke forth, with so much splendor".

(23) Ibid.

(24) Supra 2, vii.

(25) Supra 2, ix-x.

(26) Ibid, vii.

(27) The Avalon Project at Yale Law School has produced an easy-on-the-eye, hot-linked, complete text of the Commentaries in the original old English spelling. The link also offers their modern text version. I am using the modern text. Available at <http://www.yale.edu/lawweb/avalon/blackstone/blacksto.htm>

(28) For an index to the kings of England, see "Monarchs" at <http://www.britannia.com/history/h6f.html> For a specific biography see King George III at <http://www.nndb.com/people/948/000068744/> Of interest, King George considered himself a lawyer because he had read Blackstone. See footnote 121.

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(29) This portrait hangs in the National Portrait Gallery, London. Other Blackstone images are available at <http://images.google.com/images?q=sir+william+blackstone&hl=en&btnG=Search+Images>

(30) *Supra* 7. Bentham's 1776 attack treatise, *A Fragment on Government ...* was a work he never fully completed. It is a detailed statement that mixes envy with disagreements over history, law, and grammar. In it, he regards Blackstone as both an "enemy" and a great man and yet lists over 200 "errors" in Blackstone's thinking. It is available at <http://www.ecn.bris.ac.uk/het/bentham/government.htm>

(31) From the British Library, available at <http://www.bl.uk/treasures/magnacarta/translation.html>, which notes that four copies of the original Magna Carta survive. The Magna Carta is, in many respects, a truce between warring nobility that exchanges fealty for guarantees of good behavior by King John. While it contains several foundational concepts that advance democratic principles, it is basically, a hastily drawn set of grievances (a framework that would find lasting use in the hands of Thomas Jefferson) against the "misuse of ... powers by royal officials," according to the British Library.

(32) Samuel Johnson, often cited as the most quoted English writer after Shakespeare, used this term to express the deep common law roots of the Magna Carta. Available at <http://www.lycos.com/info/magna-carta.html> For an interesting commentary on Johnson, who inspired the Age of Johnson, see <http://justus.anglican.org/resources/bio/20.html>

(33) Bracton can be read online in Latin and English at the Harvard Law School Library. Available at <http://hls.law.harvard.edu/bracton/Framed/mframe.htm>

(34) Boswell reports the story in a passage of his *Life of Johnson*: "On Sunday, April 15, being Easter-day Dr. Scott of the Commons came in. He talked of its having been said that Addison wrote some of his best papers in *The Spectator* when warm with wine. Dr. Johnson did not seem willing to admit this. Dr. Scott, as a confirmation of it, related, that Blackstone, a sober man, composed his *Commentaries* with a bottle of port before him; and found his mind invigorated and supported in the fatigue of his great work, by a temperate use of it. Mr. Foss says of Blackstone:--'Ere he had been long on the bench he experienced the bad effects of the studious habits in which he had injudiciously indulged in his early life, and of his neglect to take the necessary amount of exercise, to which he was specially averse.' He died at the age of 56. He suffered greatly from his corpulence. His portrait in Bodleian shows that he was a very fat man." Available at <http://www.gutenberg.org/files/10357/10357-h/10357-h.htm>

(35) Daniel Bostin, *The Mysterious Science Of The Law, An Essay On Blackstone's Commentaries* 3 (1966).

(36) Albert W. Alschuler, "Rediscovering Blackstone", 145 *University of Pennsylvania Law Review* 1 at Footnote 35, "The most notable aspect of the structure ... was simply that the book had a structure. Blackstone ended what had been described before him as "tedious wandering about" in pursuit of English common law.

(37) Bernard J. Hibbitts, "Mirrors of Justice: Visuality and Legal Discourse". 16 *Cardozo Law Review* 241 Available at [http://www.law.pitt.edu/hibbitts/meta\\_p2.htm](http://www.law.pitt.edu/hibbitts/meta_p2.htm)

(38) Jean Edward Smith, *John Marshall: Definer Of A Nation* 75-77 (1996) "The first American edition of Blackstone's *Commentaries on the Laws of England* was published in 1772, and Thomas Marshall [John Marshall's father] was listed among the charter subscribers. For the next several years, father and son studied Blackstone together. When the first American edition of the *Commentaries* appeared in 1772, its original subscribers, in addition, to Thomas Marshall, included George Wythe, John Jay, James Wilson, Roger Sherman, John Adams, and virtually every member of the legal profession.... both

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Jefferson and Wythe, who had been Jefferson's mentor, in the 1760s were powerfully impressed by Blackstone's approach.... "

(39) Forrest McDonald, *Alexander Hamilton, A Biography* 57-59 (1979).

(40) Thomas Jefferson, *A Summary View Of The Rights Of British America*, available at <http://libertyonline.hypermall.com/Jefferson/Summaryview.html>

(41) See Morris R. Cohen, *Law And The Social Order* 126 (1933): "Legal fiction is the mask that progress must wear to pass the faithful but blear-eyed watchers of our ancient legal treasures. But though legal fictions are useful in thus mitigating or absorbing the shock of innovation, they work havoc in the form of intellectual confusion." Also see Henry S. Maine, *Ancient Law: Its Connection With the Early History of Society, And Its Relation to Modern Ideas* 21-22 (17th ed. 1901).

(42) Charles Cerami, *Young Patriots--The Remarkable Story Of Two Men, Their Impossible Plan And The Revolution That Created The Constitution* 1, 200 (2005).

(43) Lawrence Goldstone, *Dark Bargain--Slavery, Profits And The Struggle For The Constitution* 1 (2005).

(44) Joseph M. Lynch, *Negotiating The Constitution--The Earliest Debates Over original Intent* 85 (1999).

(45) Ralph Ketcham, *The Anti-Federalist Papers and the Constitutional Convention* 295 (2003).

(46) Akhil Reed Amar, *America's Constitution: A Biography* 36 (2005).

(47) *Supra* 23, at 77 Blackstone's Commentaries also appeared in an "Americanized" version specific to Virginia laws by St. George Tucker in 1803. Available at <http://www.constitution.org/tb/tb-0000.htm>

(48) Garry Wills, *Inventing America: Jefferson's Declaration of Independence* 54, 64 (1978).

(49) T.M. Cooley, et.al., "Constitutional History of the United States As Seen in the Development of American Law, a Course of Lectures Before the Political Science Association of the University of Michigan", 5-6 (1889).

(50) David Herbert Donald, *Lincoln* 53, 54 (1996). For a passing reference see Doris Godwin Kerns, *Team of Rivals: The Politics of Abraham Lincoln* 54 (2005). There is another version of Lincoln's purchase of Blackstone's Commentaries. It relates that Lincoln bought, in hopes of resale profit, a barrel of junk from a passerby. In the bottom of the barrel, he found a copy of the Commentaries. In either case, Blackstone's words reached across the ages to another young lawyer who, in the beginning of his professional life, was early on considered a failure as an attorney and without prospects for success in life.

(51) Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* 261, 232 (1998).

(52) Francis Newton Thorpe, *A Constitutional History Of The American People 1776-1850*, 40 (1898). Thorpe states, "The American Revolution would have wholly miscarried had its principles failed to attain expression in legal form ... That the monarchial Blackstone so practically contributed to the establishment of democracy in America is a paradox not without parallel in history."

(53) Available at [http://clerk.house.gov/histHigh/Virtual\\_Tours/Artifacts/blackstone.html](http://clerk.house.gov/histHigh/Virtual_Tours/Artifacts/blackstone.html) Photograph by



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Franz Jantzen, Collection of the Supreme Court of the United States, used with permission

(54) For a review of the case see [www.yale.edu/lawweb/jbalkin/articles/whatarethefactsofmarbury1.pdf](http://www.yale.edu/lawweb/jbalkin/articles/whatarethefactsofmarbury1.pdf)

(55) Available at [www.supremecourt.us/about/north&southwalls.pdf](http://www.supremecourt.us/about/north&southwalls.pdf) Individual photos can be purchased from the Curator of the U.S. Supreme Court. I ordered one of Blackstone. It arrived after a month's processing of my order, but the photographic quality is excellent. Collection of the Supreme Court of United States, used with permission.

(56) In the St. George Tucker's version of the Commentaries, Book 1, Chapter XVI Of Persons, 453 (1803). It seems appropriate to apply the "Americanized" version of the Commentaries.

(57) Joan Poliner Shapiro, Jacqueline A. Stfkovich, Ethical Leadership and Decision Making in Education, Applying Theoretical Perspectives to Complex Dilemmas 10 (2001).

(58) Supra 54 at 24.

(59) Thomas Jefferson, The Declaration Of Independence.

(60) Preamble To The United States Constituion. Most scholars believe this single sentence was written by Gouverneur Morris, Constitutional Convention delegate from Pennsylvania. Morris was a brilliant delegate who, like others in this paper, suffered great physical pain in his childhood and early adulthood--his arm was scalded and withered; his right leg was crushed and amputated, yet he was undaunted. Such men created, within the context of Blackstone's Commentaries, the ethical foundation of America and the new nation's progeny, public schools.

(61) Kermit L. Hall, Ed., The Oxford Companion To American Law 68 (2002). Blackstone did, however, believe that the "distant plantations in America ... are also in some respect subject to the English laws.... Such colonists carry with them only so much of the English law, as is applicable in their own situation and the condition of an infant colony." See William Young Birch, 1803 at <http://www.consitutin.org/tb/tb-1104.htm>

(62) Kenneth A. Strike, Emil J. Haller, Jonas F. Soltis, The Ethics Of School Administration 4, 5 (1988). See also A. Renee Prillaman, Deborah J. Eaker, Doris M. Kendrick, Eds., The Tapestry Of Caring 22-24 (1994) where they explain moral education from the perspective of the ethic of caring as having four major components: modeling, dialogue, practice, and confirmation.

(63) Primum non nocere--Above all, do no harm. For a review of the Oath of Medicine, see [http://www.pbs.org/wgbh/nova/doctors/oath\\_classical.html](http://www.pbs.org/wgbh/nova/doctors/oath_classical.html) For a thoroughly scholarly review, consider Robert M. Veatch, The Basics Of Bioethics (2002). As Professor of Medical Ethics and former director of the Kennedy

Institute of Ethics, Veatch is regarded as the expert on medical ethics. Many points of medical ethics apply to education.

(64) Robert J. Starratt, Building An Ethical School, A Practical Response to the Moral Crisis in Schools 7-9 (1994).

(65) See the Commentaries, Book 1, Section 2, Of the Laws of England.

(66) Available at <http://www3.state.id.us/idstat/TOC/idstTOC.html>

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- (67) Available at <http://assembly.state.ny.us/leg/?co=0>
- (68) Available at <http://www.flsenate.gov/Statutes/index.cfm>
- (69) Available at <http://www.leginfo.ca.gov/calaw.html>
- (70) Available at <http://www.law.cornell.edu/constitution/constitution.overview.html>
- (71) See Commentaries, Book III, Chapter 17.
- (72) For an excellent primary source account of the 1735 John Zenger free speech trial see <http://www.law.umkc.edu/faculty/projects/ftrials/zenger/zenger.html>
- (73) See Commentaries, Book I, Chapter I. This passage has particular application today, given the current state of war in the Middle East, the Patriot Act, and other applications of the federal government.
- (74) *Supra* 37 at 3.
- (75) *Supra* 38 at 11-13.
- (76) *Ibid* at 11.
- (77) *Board of Education v. McCluskey* 458 US 966, 1982.
- (78) *Ingraham v. Wright*
- (79) *Supra* 38 at 13-15.
- (80) Available at [http://www.thirdworldtraveler.com/Third\\_World\\_US/Shame\\_Nation\\_Kozol.html](http://www.thirdworldtraveler.com/Third_World_US/Shame_Nation_Kozol.html) Also see the December 2005 issue of Phi Delta Kappan which features Kozol as the cover story, "The Shame of the Nation." Therein, Kozol reports small progress in terms of the ethics of equality.
- (81) Available at <http://www.lecturemanagement.com/speakers/ruby-payne.htm>
- (82) *Supra* 38 at 15-17.
- (83) Nel Nodding, *The Challenge To Care In Schools, An Alternative Approach To Education*, i (1992). She notes "Caring cannot be achieved by formula. It requires address and response; it requires different behaviors from situation to situation and person to person. It sometimes calls for toughness, sometimes tenderness. With cool, formal people, we respond caringly with deference and respect; with warm informal people, we respond caringly with hugs and overt affection. Some situations require only a few minutes of attentive care; others require continuous effort over long periods of time."
- (84) Available at <http://www3.state.id.us/cgi-bin/newidst?sctid=330120054.K>
- (85) Available at <http://www3.state.id.us/cgi-bin/newidst?sctid=330120008.K>
- (86) See Commentaries, Book III and IV.
- (87) The Interstate School Leaders Licensure Consortium produced the list of standards. See Standard 5,

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which states: A school administrator is an educational leader who promotes the success of all students by acting with integrity, fairness, and in an ethical manner. Available at <http://kli.kresa.org/isllc.htm>

(88) Available at <http://www.idschadm.org/Staff-&-Members.htm>

(89) See Commentaries, Books I, II, III, and IV.

(90) *Gebser v. Lago Vista Independent School District* 524 U.S. 274 (1989).

(91) In this case, the code would have been similar to the statutory provisions I cited in the Idaho example. Additionally the teacher violated his professional code of ethics. To review the American Federation of Teacher (AFT) code is available at <http://qcpages.qc.cuny.edu/EECE/sthandbook/aftethics.html>

(92) The NEA Code is brief, with 2 principles--Principle 1--Commitment to the Student and Principle 2--Commitment to the Profession. Available at <http://www.nea.org/aboutnea/code.html>

(93) *Franklin v. Gwinnett Public Schools* 503 U.S. 60 (1992).

(94) *Oona v Mccafferty* 143 F.3d 173 (1998).

(95) *Davis v. Monroe County School Board* 574 S.E.2d 482 (2002).

(96) Available at <http://uscode.house.gov/>

(97) Available at <http://www.ed.gov/policy/speced/guid/idea/idea2004.html> This massive federal statute has been the subject of considerable debate since its inception in 1975. While it provides for necessary inclusion of special education children, it has never fully been funded by the United States government. For its twenty five year historical review see <http://www.ed.gov/policy/speced/leg/idea/history.html>

(98) Available at <http://www.dol.gov/oasam/regs/statutes/titleix.htm>

(99) For an excellent reference on United States Constitutional clauses see <http://lib.law.washington.edu/ref/consticlauses.html#nick>

(100) These terms are typically associated with any study of ethics. I argue that deontology, the study of moral obligation aligns with the ethic of care; that axiology, the study of the nature and types of value judgments aligns with the ethic of critique; and, finally that teleology, the study of the ends and consequences aligns with the ethic of justice. Together, as fitted on this wobbly wheel of a unified theory of ethics, they comprise the summum bonum--the greatest good and purpose--in the pursuit of ethical performance for the educational leader.

(101) William Butler Yeats. His poem *The Centre Cannot Hold* includes the lines "Turning and turning the widening gyre .../Things fall apart; the centre cannot hold/Mere anarchy is loosed on the world/The blood-dimmed tide is loosed, and everywhere/The ceremony of innocence is drowned/The best lack all conviction, while the worst/Are full of passionate intensity." A gyre is a circular motion or form.

(102) Edmund Burke, *Speech On Conciliation With The Colonies, Select Works On Edmund Burke Volume 1* 241 (1999).

(103) John Macy Zane, *The Story Of Law* 335 (1998).

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- (104) Arthur R. Hogue, *Origins Of The Common Law* 250 (1986).
- (105) *Supra* 20 at 3.
- (106) Harper Lee, *To Kill A Mockingbird* 142 (1988).
- (107) Bracton, 1.3,c.3. Available at [hsl.law.harvard.edu/bracton/](http://hsl.law.harvard.edu/bracton/)
- (108) Herman Melville, *Moby Dick* 325 (1851).
- (109) Commentaries at \*403 and \*410.
- (110) See Commentaries \*40 -\*44, generally for Blackstone's introduction of natural laws as the foundation for ethics and, along with divine laws as the scientific foundation for all governing laws. Blackstone wrote in an era of great scientific discovery and he framed his lectures and books around the notion that, like immutable natural and divine laws, his study and organization of common law had an equal scientific basis, complete with branches of specialization and intellectual formulas. It is what Boorstin called "The Mysterious Science". Without this belief, it is difficult to conceive of Blackstone completing his great project.
- (111) See Commentaries Book IV, Chapter I, II.
- (112) Daniel M'Naughten's Case, 8 English Report 718, 722, 723 (1843).
- (113) Robert Traver, *Anatomy Of A Murder* 200-2003 (1958).
- (114) *Supra* 90.
- (115) Barry C. Reed, *The Verdict* (1984).
- (116) See Commentaries BOOK III, Chapter VI, 4.
- (117) Richard Burbage was the leading player in Shakespeare's company.
- (118) *Supra* 18.
- (119) John W. Cunningham, *High Noon* (1952). Cunningham wrote the screenplay after a reading an obscure short story, *The Tin Star*. The movie version remains as one of Hollywood's most famous movies.
- (120) Dorthory Johnson, *The Man Who Shot Liberty Valance* (1954). Many are surprised that this book was written by a woman, but Johnson was famous for other Western works that were made into lasting movies as well: *A Man Call Horse* and *the Hanging Tree*. In a recent list of the Best Western authors, she is joined by another woman, Mari Sandoz, author of *Cheyenne Autumn* and *We Were the Sioux*.
- (121) Gene Pitney, *The Man Who Shot Liberty Valance* (1962). These lyrics are Pitney's version that became a bestselling single record after the movie was released. The Paramount Pictures title track was written by Burt Bacharach and Hal David.
- (122) In the movie, interestingly enough, John Wayne shoots and kills Liberty Valance from hiding with a rifle. It is the only movie Wayne ever made in which he does not personally face and destroy the villain.

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The plot line required the lawyer, Jimmy Stewart, kill Valance in front of the unsuspecting townspeople of Shinbone. It is only at the end of the movie, when Stewart returns to Shinbone as a U.S. Senator for the funeral of Wayne's character that he tells the truth about how Valance was killed.

(123) Read Charles Dickens. Bleak House. For a scholarly review of Dickinson's lawyerly characters in the likes of Jaggers, Grimwig, and Skimpole see Ronald Baughman, "Dickens And His Lawyers", ALSA Forum Volume 6, Number 2 (1982) <http://tarlton.law.utexas.edu/pop/etext/lsf/baughman6.htm>

(124) John Dickinson, Administrative Justice And The Supremacy Of Law In The United States, 342-345 (1927). In the above quotation, Dickinson, a Harvard law professor, quotes Francis Bacon from Bacon's, Dedication to Book II of the Advancement of Learning.

(125) Dennis R. Nolan, "Sir William Blackstone And The New American Republic: A Study Of Intellectual Impact", 738, 51 New York University Law Review 731 (1976). Nolan notes that 'If one is to believe the historians, Blackstone first helped to cause the Revolution by his opposition to the claims of the colonies and then provided the theoretical justification for the rebellion. For example, Professor Chroust has asserted that Blackstone was 'very extreme in his Anti-American bias, and he appeared among the most vociferous advocates of a harsh and uncompromising attitude.... It was this narrow and uncompromising outlook which led to the break with the American colonies.'

(126) Ibid, 751.

(127) Bradford E. Biegon, "Presidential Immunity In Civil Actions: An Analysis Based Upon Text, History, And Blackstone's Commentaries", 677-682, 82 Virginia Law Review 677 (1996).

(128) Albert W. Alschuler, "Rediscovering Blackstone", 27, 145 University of Pennsylvania Law Review 1 (1996-1997). Alschuler notes that Blackstone "... drew illustrations not only from well known Roman, Continental and canon-law texts but also from the law which 'prevailed in Mexico and Peru before they were discovered by the Spaniards,' from the laws of ancient Egypt, from the 'present laws of the Tartars, from views currently prevalent in the 'study of Brabant', from practices in Venice, Florence, and Portugal and from countless other foreign sources.

(129) There are many articles and books on this growing debate. For a simple review of where the Justices stand, see "The Use of International and Foreign Law in Interpreting the US Constitution" at [www.acslaw.org/files/intl%20law%20study%20guide%201-18-06.pdf](http://www.acslaw.org/files/intl%20law%20study%20guide%201-18-06.pdf)

(130) Albert R. Jonsen and Stephen Toulmin, The Abuse Of Casuistry, A History Of Moral Reasoning, 300 (1988).

(131) For an application of my concept of ethos non scripta see Joseph Grenny, Kerry Patterson, Ron McMillan, Al Switzler, Crucial Conversations 79-91 (2004) wherein the authors explain the notion of the "pool of shared meaning" and how to develop dialogue skills that make it safe to "talk about almost anything."

(132) Abraham Maslow developed a theory of human motivation based on stages of need that begins with the physiological and ends with the self-actualization level. To read his groundbreaking work, see <http://psychclassics.yorku.ca/Maslow/motivation.htm>

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