Blackstone in America
Selected Essays of Kathryn Preyer

Blackstone in America explores the creative process of transplantation—the way in which American legislators and judges refashioned the English common-law inheritance to fit the republican political culture of the new nation. With current scholarship returning to focus on the transformation of Anglo-American law to “American” law, Professor Kathryn Preyer’s lifelong study of the constitutional and legal culture of the early American republic has acquired new relevance and a wider audience.

All nine of Professor Preyer’s important and award-winning essays are easily accessible in this volume, with new introductions by three leading scholars of early American law. The collection includes Preyer’s work on criminal law, the early national judiciary, and the history of the book.

Mary Sarah Bilder is a professor of law at Boston College Law School and the Michael and Helen Lee Distinguished Scholar. She is the author of The Transatlantic Constitution: Colonial Legal Culture and Empire, which won the Littleton-Griswold Prize in American Law and Society, awarded by the American Historical Association. She also serves on the editorial boards of Law and History Review, Journal of Legal Education, and New England Quarterly.

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Blackstone in America explores the creative process of transplantation – the way in which American legislators and judges refashioned the English common-law inheritance to fit the republican political culture of the new nation. With current scholarship returning to focus on the transformation of Anglo-American law to “American” law, Professor Kathryn Preyer’s lifelong study of the constitutional and legal culture of the early American republic has acquired new relevance and a wider audience.

Professor Preyer’s nine essays do justice to the complexity of the story of transformation. English law and legal institutions, imperfectly understood to start with, and themselves in transition, were refracted through colonial and state experience and then adjusted to the needs of the new nation, which itself was in the throes of radical transformation – from republicanism to democracy; from an agrarian economy to a commercial manufacturing economy; and already in the 1790s, from slavery to freedom. When these divergent forces and competing interests coalesced into political divisions, as they did in the 1790s, the stage was set for the creation of distinctively American legal institutions.

The political conflict over law and legal institutions focused on Constitutional interpretation and pitted those who championed nationalism (represented by the Washington and Adams Federalists) against a tenacious state and local legal culture (championed by the Democratic Republican party of Jefferson and Madison). In Kathryn Preyer’s words, “The struggle to establish harmony between nationalism and localism, the whole and its parts, is the single greatest link between the past and present in this country’s traditions.”
“Harmony” was not established, however, as Preyer’s scholarship makes clear. Rather, the competing parties, operating simultaneously at the state and national level, fashioned a legal institutional framework that struck an uneasy balance between nationalism and localism, between inherited ideas and creative improvisation. Traditional accounts of this period focus on the results; Preyer concentrates on the process itself – on the interplay of idealism and self-interest; the role of accident and contingency; and the indeterminacy of the final compromise. In short, Preyer’s pioneering scholarship captures American legal institutions in the making.

During her lifetime, Preyer contemplated a collection of her essays, which she planned to entitle Blackstone in America. The essays, while conceptually of a single piece, were intended to be free-standing. The organization of this book follows her outline. Part I deals primarily with developments at the national level, focusing on the Judiciary Acts of 1789 and 1801, and on the conflict between state and federal authority (the subject of her essay on the Callender trial). These essays draw on Preyer’s important Ph.D. dissertation, “The Judiciary Act of 1801,” completed in 1959 at the University of Wisconsin under the direction of Merrill Jensen and Merle Curti.

The subject of criminal law, broached in the Callender essay, is the main theme of Part II. Preyer’s essay, “Crime, the Criminal Law and Reform in Post-Revolutionary Virginia,” on this subject won the Surrency Prize awarded by the American Society for Legal History.

Criminal law is also the focus of the essays in Part III, dealing with the trans-Atlantic exchange of ideas between American and continental reformers.

In all of these essays, Kathryn Preyer’s deep learning is manifest, as is her distinctive voice. The collection includes Preyer’s major essays. She also wrote numerous book reviews (most of which are now available electronically) that reveal her extensive knowledge and critical insight. Her early work to the mid-1960s appears under the names Kathryn Conway Turner or Kathryn Turner. Minor changes have been made to the essays for clarity and grammatical correctness. In a few instances where minor errors have come to the editors’ attention, they have been silently corrected.

The editors would like to thank the many friends of Kathryn Preyer who contributed to and participated in programs in her honor at the American Society for Legal History’s Annual Meeting in November 2005 and at Wellesley College in September 2005. Thanks also to Professor
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Christine Desan of Harvard Law School, who assembled much of Preyer’s written scholarship, and John D. Gordon III. Senior Editor Lew Bateman of Cambridge University Press was enthusiastic about the collection from the outset, and the editors appreciate his efforts and those of the Press in publishing this volume. We gratefully acknowledge the administrative work of Emily Spangler at the Press. The editors also thank Ronald Cohen for his careful editing of the manuscript and his concern for the integrity of the original. Kathryn Preyer would have loved to have had him as her editor.

Above all, the editors are deeply grateful to Robert Preyer. His support and encouragement have been invaluable.

Editors’ Note

In order to maintain the historical integrity of the original articles, we have retained Kathryn Preyer’s style, citation format, and typing conventions throughout. The first three chapters were written under the name Kathryn Turner.
Acknowledgments

The editors of Blackstone in America thank the following for kindly granting them permission to use Kathryn Preyer’s previously published essays in this collection:


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